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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 397.

(With Nos. 462-487, inclusive)

THE MICHIGAN CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

Brief and Argument for the Appellee on the Constitutional and Associated Questions,

BY

ROGER IRVING WYKES.

19,899.

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Complainant and Appellant,

vs.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE OF MICHIGAN,
Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF AND ARGUMENT FOR DEFENDANT.

Statement.

This is a proceeding to restrain the collection of taxes, upon the property of the complainant railroad company in Michigan, which were imposed by a state board of assessors, upon ad valorem assessments at the average rate imposed upon other property throughout the state subject to ad valorem assessment, under the state constitution as amended

> "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a State Board of Assessors." (§ 9 *Act* 173 *of* 1901.)

After the completion of such roll, the state board of assessors was required to meet at the state capitol, at Lansing, on the third Monday of December, in each year, and continue in session from day to day for so long a period as necessary, not later than the fifteenth day of January next thereafter, to review the assessment roll, and all persons or corporations interested were given the right to appear and be heard as to the valuation of their property, and the state board of assessors given authority to,

> "on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal." (§ 10 *Act* 173 *of* 1901.)

The assessment roll, provided for, was prepared for 1902; review had in accordance with the statute, and opportunity given to all persons or corporations interested to appear and be heard in regard to their assessments.

By act 173 reports are required to be made by certain municipal officers to the state board of assessors, which place before it, prior to the fifteenth day of December, a statement of the amount of ad valorem taxes to be raised (for the current year) in the several municipalities of the state for state, county, municipal, township and school purposes, and a statement of the aggregate valuation of the property in the several municipalities of the state taken from the assessment rolls. From this data the rate of taxation, imposed under act 173, is ascertained.

The act also provides that the state board of assessors shall, not later than the fifteenth day of December in each year,

> "ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined." (§ 12 *Act* 173, 1901)

and that

> "Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties; (§ 13 *Act* 173, 1901)

after which a certificate, in the form set forth in the bill of complaint, is required to be attached to said assessment roll, which

> "said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer."

The average rate required to be ascertained by the state board of assessors under the provisions of said act 173 was originally determined for the year 1902 to be $13.68905 on each one thousand dollars of valuation, the state board of assessors construing the statute requiring it to fix the average rate as authorizing it to make a relative adjustment between the property assessed under act 173 and that assessed throughout the state generally and permitting it to use as the divisor of the amount of levied taxes in reaching that rate, what it conceived to be, the actual rather than the assessed value of the general property of the state, and the tax was spread on that basis.

The average rate as first ascertained by the state board of assessors was determined by the state supreme court to be illegal as not having been ascertained and determined in the method prescribed by statute, and that board has been compelled to reconvene and reascertain and redetermine it; the court holding the duty imposed upon the board in regard to this rate to be ministerial, involving simply the mathematical computation of dividing the aggregate taxes levied in the state for state, county, township, school and municipal purposes by the aggregate assessed valuation of the property of the state. The rate as redetermined is $16.55329 upon each one thousand dollars of valuation. A duplicate of the original assessment roll was prepared and the tax extended thereon according to such reascertained rate, the certificate and warrant required attached thereto, and the tax roll regularly delivered to this defendant.

The complainant paid its taxes pursuant to the law in force previous to the enactment of act 173 of 1901 (§ 6277 C. L. 1897), and filed its bill of complaint to restrain the collection of taxes under act 173 and the constitutional amendments on which it was based and setting forth the invalidity of the said amendments and statute and the assessments thereunder, and assigning numerous reasons therefor.

In addition to many objections to the system of taxation invoked by act 173 which present questions purely of law, the bill of complaint alleges that the general properties of the state other than railroad property, upon which taxes were assessed for state, county, township, school and municipal purposes were assessed at less than the true and actual cash value and at about eighty-two per cent thereof; that unincorporated persons, associations, partnerships and joint stock associations possess and operate railroads in Michigan and own property similar in character and engaged in the same business and owned under the same circumstances as

the railroad property of the complainant; that railroad companies, (among whom were some of the complainants in this and associated cases) operate sleeping cars, and that sleeping cars were also operated by corporations or institutions independent of railroads; that interurban and street railways and their properties are engaged in the same business as is complainant.

The defendant made answer to the bill of complaint which denies all statements setting up the unconstitutionality and invalidity of the constitutional amendments and act 173 of 1901 and the system of taxation invoked thereby, and in addition setting forth, in denial of allegations of the bill, that the general properties of the state, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, were not assessed at less than their true and actual cash value, but were, for 1902, presumptively, conclusively and actually assessed at their true and actual cash value, and further setting forth that the properties of the complainant company, as assessed by the state board of assessors, pursuant to act 173, for the year 1902, were assessed at much less than the true and actual cash value thereof, and that the undervaluation of the railroad property was not the result of inadvertence, mistake or accident, but was intentional and fraudulent.

The answer also denies the allegations of the bill in regard to sleeping car, and interurban and street railway companies, and as to railroad and similar property to that owned and operated by complainant, being owned by unincorporated persons or institutions not subject to taxation under act 173. The material proof on these questions appears in the record.

Act 173 provides that in determining the true cash value of property of railroad companies in Michigan, the board shall be guided by the relation which the mileage of main

track in Michigan bears to the entire mileage of main track both within and without Michigan. (§ 8.)

All taxes collected under the act are to be applied in paying the interest upon the primary school, university, and other educational funds, and the interest and principal of the state debt in the order recited, until the extinguishment of the state debt other than the amount due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund.

Since 1850 the constitution (§ 1 *Art.* 15) of the state has contained a reservation of the right to alter, amend or repeal acts affecting corporations and the general railroad law (§ 11 art 5, § 6312 C. L. 1897), being a general act of incorporation under which the complainant is organized and of which the provisions of the previous law for the taxation of railroad companies at a specific rate of their gross income were a part, has also, since 1873, contained such a reservation.

The Michigan Constitution has always provided for the imposition of specific taxes, and such taxes have always been imposed, the legislature selecting as the subjects thereof such corporations and institutions as it saw fit.

Prior to 1901, railroad corporations were always classed by themselves, separate and distinct from other corporations and property for purposes of taxation.

The state has always imposed taxes both by the designation of an aggregate sum to be levied, and by designation of a certain rate per cent to be imposed, and this has taken the form of a continuing rate to be imposed year after year without new legislative action and has been applied to ad valorem taxes.

The cricuit court dismissed the bill of complaint of this complainant and also of 26 of the other railroad companies filing similar bills; holding act of 173 of 1901 and the

constitutional amendments and all proceedings had or contemplated thereunder to be legal and valid.

The complainant appeals to this court. The errors which it assigns will, for convenience of argument, be classified as follows:

I.

The System of Taxation invoked by the act and constitutional provisions in question violates the fourteenth amendment of the Federal constitution in the denial of equal protection of the laws in that:

(**A.**) Corporations subject to act 173 are arbitrarily separated for taxation from others of the same character. (Assignment 7l.) *(Argued post p. 77.)*

(**B.**) Act 173 is applied only to the property owned by corporations to the exclusion of similar property similarly used and owned by natural persons. (A. 7k). *(Argued post p. 111.)*

(**C.**) The personal property and credits of complainant not used in, or incident to its railroad business, are taxed differently from the personal property and credits of others. (A. 7i and j.) *(Argued post p. 120.)*

(**D.**) The other owners of property taxed in Michigan are given the following rights, protections or benefits, which are denied to corporations taxed under Act 173:

(*1.*) Of having their debts deducted from their credits. (A. 7h.) *(Argued post p. 120.)*

(*2.*) Of having their taxes fixed by a representative legislature. (A. 7a, b, 4.) *(Argued post p. 146.)*

(*3.*) Of paying taxes based upon the expenditures of the state and municipalities to which their property belongs,

while the railroads, are taxed, under act 173, because of expenditures of local governments, whose benefits they do not share. (A. 7f.) *(Argued post p. 156.)*

(*4.*) Of having a hearing concerning the amount of their taxation. (A. 7e.) *(Argued post p. 162.)*

(*5.*) Of having equalization of their assessments. (A. 7g.) *(Argued post p. 173.)*

(*6.*) Of having their taxes fixed with reference to the needs of the community paying and receiving the taxes. (A. 7c.) *(Argued post p. 179.)*

(*7.*) Of having every tax law applying to their property "distinctly state the tax and the object to which it is to be applied," without reference, "to any other law to fix such tax or object." (A. 7m.) *(Argued post p. 186.)*

(**E.**) Discrimination results between the corporations taxed under act 173, as they exist in different municipalities where the tax rates are different, in that it requires the same rate of all railroad companies. (A. 7n.) *(Argued post p. 194)*

(**F.**) Discrimination results in that the complainant's property was for 1902 assessed at its cash value, while the general property, the assessed value of which formed the divisor in reaching the average rate imposed upon complainant's property was assessed at only 82+% of its value. A. 12.) *(Argued in Mr. Knappen's Brief.)*

II.

That the system violates the provision of the Fourteenth amendment inhibiting the taxing of property without due process of law,

(*1.*) As the requirements of this provision of

(*a.*) The imposition of taxes by a representative legislature and

(*b.*) A hearing upon the rate of taxation,

are not observed as the taxes under act 173, instead of being imposed by a representative legislature, are imposed by officers of local municipalities who do not represent the complainant as to its property beyond the jurisdiction of such officers. (A. 6.) (*Argued post p.* 200 *et seq.*, 146 *et seq.*, 162 *et seq.*)

(*2.*) In that the moneys demanded of complainant are not a tax but an arbitrary, enforced contribution amounting to a taking of private property for public use. (A. 6.) (*Argued post p.* 212.)

III.

The system in question violates section 8 of article 1, of the Federal constitution, in that it regulates commerce between the states. (A. 3.) (*Argued post p.* 213.)

IV.

The system in question violates the state constitution in

(*1.*) That the state constitution requires uniformity of assessment of all property subject to ad valorem assessment, whether taxed at the average rate or generally, and that the system under act 173 violates that uniformity by permitting the deduction of debts to property generally but not to that taxed under act 173. (A. 8, 9.) (*Argued post p.* 244, 249.)

(*2.*) That act 173 violates Sections 10 and 12 of Article XIV of the state constitution requiring assessments at cash value. (A. 10, 11.) (*Argued post p.* 247, 249.)

Note:—Similar bills of complaint were filed against the same defendant by railroad companies complainant as follows:

Pere Marquette Railroad Company, et al.;

Chicago, Milwaukee & St. Paul Railway Co.;

The Minneapolis, St. Paul & Sault Ste. Marie Railway Co.;

Grand Rapids & Indiana Railway Co.;

Wisconsin & Michigan Railway Co.;

Lake Shore & Michigan Southern Railway Co., et al.;

Chicago & Northwestern Railway Co.;

Chicago, Detroit & Canada Grand Trunk Junction Railroad Co.;

Duluth, South Shore & Atlantic Railway Co.;

Michigan Air Line Railway Co.;

Grand Trunk Western Railway Co.;

Cincinnati, Saginaw & Mackinaw Railroad Co.;

Toledo, Saginaw & Mackinaw Railroad Co.;

Pontiac, Oxford & Northern Railroad Co.;

Escanaba & Lake Superior Railroad Co., et al.:

Ann Arbor Railroad Co., et al.;

Copper Range Railroad Co., et al.;

Mineral Range Railroad Co., et al.;

Lake Superior & Ishpeming Railway Co., et al.;

Marquette & Southeastern Railway Co., et al.;

Gogebic & Montreal River Railroad Co., et al.;

Munising Railway Co., et al.;

Detroit & Mackinac Railway Co.;

Detroit, Grand Haven & Milwaukee Railway Co.;

St. Clair Tunnel Company;

Sault Ste. Marie Bridge Co.;

Manistee & North Eastern Railroad Co.

The cases were heard together in the circuit court and (except in the case of the Detroit, Grand Haven & Milwaukee Railway Co., in which special facts appear) the bills were dismissed. Appeals in all the cases (except the Pere Marquette) have been taken to this court. The cases will be heard together, the record in each being supplemented by the record in this case.

OUTLINE OF THE ARGUMENT.

First.

A. *The power of taxation in general.* The taxing power of the state is one of its highest attributes of sovereignty and essential to its continued existence. *Argument p.* 63.

Union Pacific R. R. Co. v. Peniston, 18 Wall, (85 U. S.) 5, 29, 30;

McCulloch v. State, 4 Wheaton, (17 U. S.) 316, 428;

Picard v. East Tennessee, etc., R. R. Co., 130 U. S. 641;

Weston v. Charleston, 2 Peters (27 U. S.), 466;

Providence Bank v. Billings, 4 Peters (29 U. S.), 516, 563.

B. *The fourteenth amendment in general.* The fourteenth amendment was not designed or intended to limit the taxing power of the states. *Argument p.* 63.

Slaughter House Cases, 16 Wall, (83 U. S.) 36, 81;

Delaware Railroad Tax, 18 Wall, (85 U. S.) 206.

C. *Presumptions favor the validity of taxing statutes.* The presumption of constitutionality following taxing statutes is stronger than applies to laws generally and only where a taxing system clearly and palpably violates the fundamental law will it be held invalid. *Argument p.* 65.

Henderson Bridge Company v. Henderson City, 173 U. S. 592, 614, 615;

King v. Mullins, 171 U. S. 404, 435, 436;

Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 562, 563;

San Diego Land & Town Co. v. National City, 174 U. S. 754;

Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 479;

Central Pacific R. R. Co. v. Evans, 111 Fed. 76.

D. *Classification is permitted.* The fourteenth amendment to the Federal constitution was not designed or intended to prevent the state from adjusting its system of taxation in all proper and reasonable ways, nor intended to compel it to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes; but permits classification for purposes of taxation, the application of different rules of assessment, valuation and review to different classes and the imposition of different rates thereon; and it is sufficient that all persons within the same class are treated alike and that there is no discrimination in favor of one as against another of the same class. *Argument p.* 66.

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232;
Giozza v. Tiernan, 148 U. S. 657, 662;
Adams Express Co. v. Ohio, 165 U. S. 228;
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293;
Billings v. Illinois, 188 U. S. 97, 102, 103.

The state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.

Merchants & M. Nat. Bank v. Pennsylvania, 167 U. S. 461;
Kentucky Railroad Tax Cases, 115 U. S. 321;
Home Insurance Co. v. New York, 134 U. S. 594;
Gulf, etc., Ry. Co. v. Ellis, 165 U. S. 150;
Clark v. Titusville, 184 U. S. 329;
American Sugar Refining Co. v. Louisiana, 179 U. S. 89;
New York v. Barker, 179 U. S. 279;
Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;
Travelers Life Ins. Co. v. Conn., 185 U. S. 364;
Kidd v. Alabama, 188 U. S. 730;

Cook v. Marshall County, 196 U. S. 269;

Coulter v. Louisville & N. R. Co. 196 U. S. 608, 609;

Field v. Barber Asphalt Paving Co., 194 U. S. 621, 2.

E. *Limitations upon the power of classification.* The limitations upon this power require it to rest upon some difference, bearing a just and reasonable relation to the act in respect to which the classification is proposed, and it is enough that there is no discrimination in favor of one as against another of the same class. *Argument p.* 71.

Gulf etc. Ry. Co. v. Ellis, 165 U. S. 155;

Missouri v. Lewis, 101 U. S. 22;

Barbier v. Connolly, 113 U. S. 27;

Duncan v. Missouri, 152 U. S. 377, 382;

Bell's Gap Ry. Co. v. Pennsylvania, 134 U. S. 232;

Home Life Insurance Co. v. New York, 134 U. S. 594;

Pacific Express Co. v. Seibert, 142 U. S. 339.

F. *Comparison of power of taxation with other powers.* Different rules apply to, and 'fix and limit the power of classification in cases of taxation than in other cases. *Argument p.* 72.

Connolly v. Union Sewer Pipe Co., 184 U. S. 562, 563;

American Sugar Refining Co. v. Louisiana, 179 U. S. 89;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;

Billings v. Illinois, 188 U. S. 102;

Cook v. Marshall County, 196 U. S. 274.

Second.

The classification made by act 173 is based upon such reasonable differences of property, situation, circumstance, or use, as to satisfy the requirements of the fourteenth amendment. *Argument p. 77.*

A. That the fourteenth amendment, as applied to railroad and other public service corporations, permits separate classification of those corporations and their property, for purposes of taxation, must be regarded as placed at rest by the cases, and the laws of the several states have uniformly provided separate and distinct systems and rules of taxation for railroad property, which have been generally sustained:

State Railroad Tax Cases, 92 U. S. 575.

Kentucky Railroad Tax Cases, 115 U. S. 321 (81 Ky. 492, 512);

Columbus Sn. Ry. Co. v. Wright, 151 U. S. 470,—s. c. 89 Ga. 574;

Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421,—s. c. 133 Ind. 625;

Northern Pacific R. R. Co. v. Barnes, 2 N. D. 310, 395, 396, 397;

McHenry v. Alford, 168 U. S. 651, 665, 673;

Florida, etc. R. R. Co. v. Reynolds, 183 U. S. 480;

Missouri River, etc. R. R. Co. v. Morris, 7 Kan. 210;

State Board of Assessors v. Central R. R. Co., 48 N. J. L. 146, 278, 280, 290, 300, 313;

Central Iowa Ry. Co. v. Board of Supervisors, 67 Iowa 199;

City of Dubuque v. C. D. & M. R. R. Co., 47 Iowa 200;

Owensboro & N. Ry. Co. v. Davies County, 3 S. W. (Ky.) 164;

Ames v. People, 56 Pac. (Col.) 656;
Yazoo & M. V. R. Co. v. Adams, 25 So. 355;
Louisville & N. R. Co. v. City of L., 29 S. W. (Ky.) 865;
St. Louis, etc. Ry. Co. v. Worthen, 52 Ark. 529;
Chamberlain v. Walter, 60 Fed. 788;
Sawyer v. Dooley, 21 Nev. 390, 398;
State v. Severence, 55 Mo. 378;
Elliott on Railroads, § 740 and cases cited;
Cooley on Taxation (3rd. ed.) 72 et seq.
Guthrie on the Fourteenth Amendment, p. 113 and cases.

(*1.*) Railroad corporations possess franchises of a character peculiar to themselves and different from those possessed by other corporations as follows: *Argument p.* 85.

(*a*) the right of eminent domain;

(*b*) perpetual existence;

(*c*) the use of public property, (*C. L.* 1897, § 6234);

(*d*) the right of succession to franchises of existing corporations is permitted to purchasing corporations, (*C. L.* 1897, § 6224);

(*e*) power to enforce connections with other companies;

(*f*) the sale value of franchises is recognized by statute and provision is made for their transfer. (*C. L.* 1897, §§ 6328, 6331, 6333, 6339, 6341.)

(2.) The intangible value attaching to railroad property differs from that attached to property generally:

Argument p. 86.

(*a*) it exists in more permanent character with railroad than other corporations (*Rec.* 497);

(*b*) the railroad corporation's business is, in a sense, monopolistic, (*Rec.* 497);

(c) railways are peculiarly benefited by the growth of the territory in which they exist, (*Rec.* 497);

(*d*) in railway business, economies are made possible by increased density of traffic. (*Rec.* 497.)

(3.) The railway corporation is engaged in rendering a public service in which the state itself might engage and to which it may attach such limitations as it chooses.

Argument p. 87.

Cotting v. Goddard, 183 U. S. 93, 94.

(4.) The property of railroad corporations exists as a connected whole in a large number of municipalities, rendering it impossible to reach its actual value through assessment and taxation as other property is assessed and taxed.

Adams Express Co. v. Ohio, 166 U. S. 219;
S. V. R. R. Co. v. Supervisors, 78 Virginia 279;
Rorer on Railroads, p. 1499, § 14.
City of Dubuque v. C. D. & M. Ry., 47 Iowa 202.
State Board of Assessors v. Central Railroad, 48 N. J. L. 322.
See Briefs in California & Pacific R. R. Co., 127 U. S. 1.

(5.) As a public service corporation, the railroad has received public aid to a large extent. *Argument p.* 91.

(6.) Perpetual existence is denied to other corporations (*Mich. Con.*, § 10, *Art. XIV.*) *Argument p.* 91.

(7.) The right to alter, amend, or repeal is reserved in

the charter under which Michigan railroad corporations do business; this permits different treatment for taxation purposes, as long as fundamental rights are not interfered with.

Argument p. 91.

St. Louis I. M. & S. Ry. Co. v. Paul, 173 U. S. 408, 409.

(8.) The usage and practice in Michigan has always been to tax railroad corporations by a distinct rule or system. Such requirements as proceed "within reasonable limits and *general usage* are within the discretion of the legislature."

Argument p. 92.

American Sugar Refining Co. v. Louisiana, 179 U. S. 94;

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 233;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 294.

The same principles which permit the taxation of railroad corporations by a specific system allow its separate treatment for the purposes of an ad valorem system. The specific tax has been uniformly sustained.

Delaware Railway Tax, 18 Wall. (85 U. S.), 206, 231;

McHenry v. Alvord, 168 U. S. 651;

Northern Pacific R. R. Co. v. Barnes, 2 N. D., 310, 395.

(9.) The rates of railroad companies are and have always been regulated by the state. (*Con. Art. XIX A.* § 1; *Sub. Ninth,* § 9, *Art. II, Mich. general railroad law,* § 6234, *C. L.* 1897.)

Argument p. 93.

The differences above pointed out between the property, business, privileges and franchises possessed by railroad cor-

porations from those possessed by other property owners and individuals, are such as to justify their separate classification for taxation or other purposes. The fact of difference appearing, the question of the propriety of the classification is one of policy for the legislature.

B. Numerous elements exist in the classification made, which justify the legislature in making it:

(1.) No claim is made in the pleadings or the lower court that property other than railroad property was possessed by complainant or included in its assessment. *Argument p.* 94.

(2.) The purpose of act 173 is to subject to its provisions, and to the system of taxation which it invokes, only property engaged in railroad business. (§ 5, 9, *act* 173 *of* 1901.) *Argument p.* 94.

Section 5 of act 173 of 1901 construed by the rule that general, following special words are to be confined to things *ejusdem generis* is limited to railroad property.

American Transportation Co. v. Moore, 5 Mich. 368, 24 Howard 1;
McDade v. People, 29 Mich. 50;
Brooks v. Cook, 44 Mich. 617.

The system of taxation under act 173 was intended to cover the same property previously taxed specifically. This was property engaged in railroad business. (§ 6277; 3830 *clause* 8, *C. L.* 1897 *and* § 11, *act* 235 *of* 1903.)

Classification of railroad property, for the application of different systems of taxation, based on the nature of its use, is proper.

Northern Pac. R. R. Co. v. Walker, 47 Fed. 685, 686;
McHenry v. Alford, 168 U. S. 668, 669;
Stearns v. Minnesota, 179 U. S. 223.

If property was possessed by complainant, and included in its assessment, which was not engaged in its railroad business, it was its duty to disclose the fact.

Adams Express Co. v. Ohio, 166 U. S. 223.

(3.) The railroad property is made a separate class for the purpose of the imposition of a separate and distinct tax. This warrants its being made the subject of a separate system of taxation. *Argument p. 99.*

Travellers' Life Ins. Co. v. Connecticut, 185 U. S. 364.

C. Numerous statutes, limited in operation to railroad *corporations*, have been sustained,—

Minneapolis, etc. Ry. Co. v. Herrick, 127 U. S. 210;
Tullis v. Lake Erie & Western R. R. Co., 175 U. S. 348;
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512;
Louisville & N. Ry. Co. v. Tenn. Ry. Com., 19 Fed. 679.

See also, Commonwealth v. Sharon Coal Co., 164 Penn. St. 284; 304;
New York v. Barker, 179 U. S. 279.

D. Railroad companies have always been regarded as special subjects of classification for other purposes than taxation, notwithstanding the more stringent rule of classification for other purposes.

Minneapolis, etc. Ry. v. Beckwith, 129 U. S. 26;
Missouri Pacific Ry. v. Mackey, 127 U. S. 205;
Minneapolis & St. L. Ry. v. Herrick, 127 U. S. 210;
Atchison T. & S. F. R. R. v. Matthews, 174 U. S. 96;
St. Louis, etc. Ry. v. Paul, 173 U. S. 404;
Chicago, B. & Q. Ry. v. Chicago, 166 U. S. 258;
McCandless v. Richmond, W. D. R., 18 L. R. A., 440;

Schoolcraft, Admr. v. Louisville N. R. Co., 92 Ky. 233;

Georgia R. R. & Banking Co. v. Miller, 90 Ga. 571;

Minn. & St. L. R. Co. v. Emmons, 149 U. S. 364;

New York & N. E. R. R. Co. v. Bristol, 151 U. S. 556;

Clark v. Russell, 97 Fed. 900,—C. Ct A.;

Gulf, etc. R. R. Co. v. Ellis, 165 U. S 150;

Missouri, Kansas & Texas Ry. v. May, 194 U. S. 269;

Central Pacific Ry. v. Evans, 111 Fed. 76.

Third.

Should the property of specific companies, or of specific character, have been classed with that of complainant to render the statute constitutional.

A. *Sleeping car companies.* The property of such corporations and the business in which they are engaged are different from those of the railroad company. They do business under different circumstances and conditions and are properly taxed by different systems. *Argument p.* 103.

Pacific Express Co. v. Seibert, 142 U. S. 354;

Western Union Telegraph Co. v. Indiana, 165 U. S. 304;

Pacific Express Company v. Seibert, 44 Fed. 310, 316;

Pullman Southern Car Co. v. Gaines, 3 Tenn. Ch. 587;

Robbins v. Taxing District, 81 Tenn. 309;

Gibson County v. Pullman Southern Car Co., 42 Fed. 574;

Contra:

Car Company v. Texas, 64 Texas, 274.

The business of an institution or its property is to be classified for taxation with reference to its entire business,

rather than by a comparison with some other business or property which is engaged, in part in, or, in part of, the same business.

American Sugar Refining Co. v. Louisiana, 179 U. S. 95;

Cook v. Marshall County, 196 U. S. 274, 275

B. *Interurban street railways.* The property of these companies forms a different class for taxation purposes than that of the railroad corporation engaged in its railroad business as the use of the property belonging to the two institutions is different. *Argument p.* 108.

See Erb v. Morasch, 177 U. S. 584;

Savannah T. & I. Ry. v. Mayor, 198 U. S. 392.

Classification distinguishing street from steam railroads has been held valid as based on reasonable differences.

Kentucky Railroad Tax Cases, 115 U. S. 337.

See also, Jersey City v. B. Ry. Co., 65 N. J. L. 501;

Camden & A. R. Co. v. Atlantic City, 58 N. J. L. 316—affirmed 41 Atl. 1116;

Lookout Incline & L. E. R. R. v. King, 59 S. W. 805;

Cedar Rapids & M. C. Ry. v. City of C. R., 106 Iowa 476.

Questions of whether, in the construction of particular statutes, street railroads are included within the term "railroads" are considered in many cases which indicate that it has never been considered essential to classify the two together and that they are in fact different in character.

Mass. Loan & Trust Co. v. Hamilton, 11 Am. & Eng. R. R. Cases (N. S.) 771; 88 Federal, 588;

Fidelity Loan & Trust Co. v. Douglas, 9 Am. & Eng. R. R. Cases (N. S.) 713, 716, 717; 104 Iowa, 536;

Cordray v. Savannah, etc. Ry., 30 Am. & Eng. R. R. Cases (N. S.) 286;

Savannah, etc. Ry. Co. v. Williams, 30 Am. & Eng. R. R. Cases (N. S.) 279;

State v. Duluth Gas & Water Company, 76 Minn. 76;

Riley v. Galveston City Ry. Co., 13 Texas Civ. App. 247;

Louisville & P. R. R. Co. v. Louisville City Ry. Co., 2 Duv. (Ky.) 175;

Front St. Cable Co. v. Johnson, 47 Am. & Eng. R. R. Cases (N. S.) 287.

Street railways have, in Michigan, always been subjected to separate rules of taxation from steam railroads—The street railway paying its fair proportion of the public burden; the steam railroad enjoying partial exemption through the payment of specific taxes. This, in a new taxing system, justifies different classification of these institutions.

Railroad Co. v. Harris, 99 Tenn. 706, 707;

Kidd v. Ala., 188 U. S. 732.

The result of complainant's contention that steam and interurban street railways are to be classified together, is that all steam railroads and street railways must be similarly taxed. The interurban railway may possess elements of both the steam railroad and the street railway. It is a question of legislative judgment to determine with which it will be classed.

C. *Unincorporated railroads* in Michigan are not engaged in the same business as is the property of complainant.

Argument p. 111.

The only unincorporated railroads which exist here, operate principally in carrying on a private business, such as a lumbering business, and operate the railroad owned only as incident to their principal business and carry freight for other persons, if at all, under conditions dissimilar to those ex-

isting and practiced with reference to, or by, the incorporated railroads engaged in the business of common carriers.

See Record, pp. 200, 224, 384, 399, 401, 417.

(1.) The entire value of the property of the unincorporated roads is less than \$150,000.00 and their entire annual business for persons other than the owner would be limited to less than \$2,000,00.

See Mercantile Bank v. New York, 121 U. S. 161, 162.

(2.) The fact that one class is engaged principally in carrying on business for itself, while the other is engaged almost exclusively in carrying on a general business for others is, of itself, a basis of distinct classification.

Argument p. 113.

Dayton v. Coal & Iron Co., 99 Tenn. 578, 581;
Billings v. Illinois, 188 U. S. 102.

(3.) That railroad property has always enjoyed a partial exemption from taxation, the present change in the taxing system being for the purpose of bringing it to the same basis for taxation purposes as other property, justifies its separate classification from property which has not enjoyed this partial exemption. *Argument p.* 113.

Railroad Co. v. Harris, 99 Tenn. 706, 707;
Kidd v. Alabama, 188 U. S. 732.

D. *Applying in general to the failure to include sleeping car companies, interurban street railways and unincorporated railroads.* *Argument p.* 114.

(1.) If necessary to classify railroads with these institutions for taxation purposes it would be necessary to classify them together for the purpose of police regulations.

(2.) Classification among railroads, based upon differences in the amount of gross earnings, in the territory in which they operate, in the length or amount of mileage, etc., has always been permitted. *Argument p.* 114.

Commissioner of Railroads v. Wabash R. R. Co., 123 Mich. 669;

San Francisco & N. P. Ry. Co. v. Board of Equalization, 60 Cal. 12;

Chicago B. & Q. v. Iowa, 94 U. S. 155;

Wellman v. Chicago & G. T. Ry. Co. 83 Mich., 592, 599;

Dow v. Biedelman, 125 U. S. 680; 49 Ark. 335, 294;

Tullis v. Lake Erie & Western Ry. Co., 175 U. S. 351;

St. Louis & I. M. & S. Ry. Co. v. Paul, 173 U. S. 406.

Even if these institutions be regarded as engaged in railroad business, classification among them would be permitted.

(3.) Instead of being injured by the separate classification of these institutions, the complainant has, in fact, been materially benefited. The classification can only be complained of if complainant has been injured. *Argument p.* 115.

Cummings v. National Bank, 101 U. S. 160;

Clark v. Kansas City, 176 U. S. 118;

Supervisors v. Stanley, 105 U. S. 305.

(4.) The differences between the system applied to complainant's property and these other institutions is rather of form than substance, and of such character that complainant has waived its right to complain through incorporation under a law reserving the right to alter, amend and repeal.

Argument p. 116.

St. Louis & I. M. & S Ry. Co. v. Paul, 173 U. S. 406;

Leep v. Railway Co., 58 Arkansas 407.

(5.) The fourteenth amendment permits exemptions. The legislature could have exempted the property of these other institutions absolutely, while taxing that of complainant. The principles permitting this, permit also its taxation at different rates and according to different systems.

Argument p. 117.

Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 480;
Missouri v. Dockery, 191 U. S. 170, 171;
Billings v. Illinois, 188 U. S. 97;
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;
American Sugar Refining Co. v. Louisiana, 179 U. S. 89;
Cook v. Marshall County, 196 U. S. 274.

Fourth.

I.

The fourteenth amendment is not violated in permitting the deduction of debts from credits to property owners generally but not permitting the deduction under act 173.

Argument p. 119.

A. If the classification made by act 173 is proper, different rules of valuation, assessment and review applying to, and the imposition of different rates of taxation upon, the several classes is permissible and the deduction of debts from credits, in one but not in another class, is proper. *Argument p.* 120.

Travellers' Life Ins. Co. v. Connecticut, 185 U. S. 364.

B. Act 173 does not tax the property of the railroad corporation simply because of railroad ownership but because it is engaged in a particular use in the carrying on of a particular business.

(1.) Railroad corporations in Michigan are not expressly permitted to own property not engaged in railroad business.

Argument p. 121.

(2.) Railroad credits are railroad property and the nature of their use affects them as fully for taxation purposes as does the use of other property affect it. *Argument p.* 122.

Detroit, Grand Rapids & Western R. R. Co. v. Railroad Com's. 119 Mich. 132;
Chamberlain v. Walter, 60 Fed. 788, 793;
Franklin County v. Nashville, etc. Ry. Co. 12 Lea, (Tenn.) 521, 537;
Adams Express Co. v. Ohio, 166 U. S. 185;
McHenry v. Alford, 168 U. S. 651, 656.

(3.) The only credits shown by the record to be possessed by railroad corporations are those arising in the railroad business; presumptively all the property of a corporation is engaged in its business. *Argument p.* 125.

Adams Express Co. v. Ohio, 166 U. S. 223; 165 U. S. 227.

C. Act 173 makes no specific requirement of the taxation of credits without deduction for debts; if deduction be necessary to render the statute constitutional the statute must be construed in connection with the constitutional requirements as permitting the deduction. *Argument p.* 125.

First Nat. Bank of St. Joseph v. St. Joseph, 46 Mich. 529.

(2.) The state board of assessors in making this assessment did not include credits (*Rec.* 431-438.) This, taken as a contemporaneous construction, is entitled to consideration.

Argument p. 126.

Attorney General v. Glaser, 102 Mich. 405.

(3.) Under any method of valuation, it was possible for the board of assessors to make the assessment without including credits. *Argument p.* 127.

See Record 498, 499, 500; 613, 639; 660, 884.

(4.) If act 173 could be construed as subjecting credits of the corporation, taxed thereunder, to taxation without deduction for indebtedness, and so construed invades rights of complainant, such provision could be eliminated without disturbing the statute. *Argument p.* 128.

Supervisors v. Stanley, 105 U. S. 305;
Evansville Bank v. Britton, 105 U. S. 322;
Hill v. Exchange Bank, 105 U. S. 319, 322;
Insurance Co. v. Board of Assessors, 95 Mich. 468;
State v. Smiley, 65 Kansas 265;
Pullman State Bank v. Manring, 18 Wash. 255;
State v. Duluth Gas & Water Co. 78 N. W. (Minn.) 1032.

D. If the state board of assessors, in making assessment, included credits not a part of the railroad business, it exceeded its authority. It is clear that it did not.

Argument p. 130.

(2.) Complainant made no claim at the time of assessment or on review that it possessed, or that there was included in assessment, credits representing investments apart from the railroad business, nor is there any proof that it possessed such property. *Argument p.* 130.

(3.) Complainant made no complaint of the inclusion of its credits without deduction for debts owed by it, and made no application to the board of review for a deduction on account of indebtedness. It is not open to it now, to claim an unwarranted inclusion of credits. *Argument p.* 130.

First Nat. Bank of St. Joseph v. St. Joseph, 46 Mich. 526;

Central Pacific Ry. Co. v. California, 162 U. S. 128;
Pittsburgh, etc. P. R. Co. v. Backus, 154 U. S. 421;
Township of Caledonia v. Rose, 94 Mich. 216;
State v. Clark, 79 N. W. (Minn.) 829;
Stanley v. Supervisors of Albany, 121 U. S. 535;
Hepburn vs. School Directors, 90 U. S. 480.

E. The deduction of debts from credits is nothing more or less than an exemption. It does not amount to a rule of valuation. *Argument p.* 132.

F. The propriety of permitting a deduction of debts from credits to one and not to another class, and the effect of the resulting discrimination, has never, in an applicable case, been passed upon by this court. Mr. Justice Field, sitting in circuit in California, did pass upon a very similar proposition in the cases of: *Argument p.* 132.

San Mateo County v. Southern Pacific R. R. Co., 13 Federal, 722, 145;
Santa Clara County v. Southern Pacific R. R. Co., 18 Fed. 385.

(1.) The cases last referred to differ from that at bar in:

(*a*) Here the deduction of debts from credits amounts simply to an exemption to one class which may not be permitted to another. Where the classes are properly formed, it is permissible to give exemptions to one not given to another class. *Argument p.* 133.

Florida Central, etc. Ry. Co. v. Reynolds, 183 U. S. 480;
Missouri v. Dockery, 191 U. S. 170, 171;
Opinion of Circuit Judge, Record 849, 848.

(*b*) The Michigan system is limited to taxing by a special system, the property of railroad cor-

porations engaged in their separate and peculiar business.

(*c*) In the California cases the effect was to cause the railroad corporation to bear the burden of taxation of the mortgagees or bondholders.

Argument p. 134.

(2.) The decisions of Judge Field are not in accord with the later decisions of this court which have made clear the character and extent of the application of the fourteenth amendment in matters of taxation. *Argument p.* 135.

(3.) Since Mr. Justice Field's opinion, this court has decided, that *Argument p.* 136.

(*a*) Property engaged in railroad business may be made a special class for taxation purposes.

(*b*) Different rates and rules of valuation, assessment and review, may be applied to the different classes.

(*c*) It is not essential that the assessments in the different classes be at the same rate, or that the valuation be reached by a common ratio.

(*d*) Other and different rules of classification are proper and may be applied by a state in a taxing system than in classification for other purposes.

(*e*) Deductions can be made and elements considered in reaching the values in one class that are not made, or considered in another.

(f) Once a proper classification is made, so far as the fourtheenth amendment is concerned, the subclasses are thereafter separate and distinct, subject to different treatment in every respect in the legislative discretion, including the right to wholly exempt one class while taxing another.

(*g*) Property covered by the railroad mortgage is engaged in a railroad use which justifies a different classification.

(*h*) Classification may be made on the basis of use by quasi public corporations.

(4.) Judge Field's decisions have never been followed in California. The constitutional provision, which he declared unconstitutional, is still followed, and taxes imposed in accordance therewith are paid without protest. (*Rec. p.* 475.)
Argument p. 139.

Central Pacific R. R. Co. v. California, 162 U. S. 91, 117.

(5.) The chronological history of the decisions of Judge Field, in the San Mateo and Santa Clara County cases in connection with the Albany Bank cases, shows that this court has expressly refused to recognize the decisions of Judge Field as entitled to consideration, in opposition to the rule declared in the Albany Bank cases. *Argument p.* 139.

San Mateo County v. Southern Pacific R. R. Co., 13 Federal, 722, 145;
Santa Clara County v. Southern Pacific R. R. Co. 18 Federal, 385;
Supervisors v. Stanley, 105 U. S. 305;
Hills v. Exchange Bank, 105 U. S. 319, 322;
Evansville Bank v. Britton, 105 U. S. 322;
Supervisors v. Stanley, 121 U. S. 535.

G. If it is not permissible to grant deduction of debts from credits to one class, unless it is granted to all classes, the result is not the unconstitutionalty of act 173, but rather of the provision of the general tax law, permitting deduction from credits only, and not permitting similar deduction from other personal property. This invalidity might result

under the provision of the state constitution requiring uniformity, the provision requiring assessments at cash value and the fourteenth amendment. *Argument p.* 142.

State statutes permitting deduction of debts from credits, not permitting the deduction from other personalty, have been held invalid.

In re Construction of Revenue Law, 48 N. W., 813 (S. D.) etc.;
In re Assessment and Collection of Taxes, 54 N. W. 818, (S. D.);
Standard Life & Accident Association v. Assessors, 95 Mich. 466;
Cit. St. Ry. Co. v. Com. Council, 125 Mich. 694;
Exchange Bank v. Himes, 3 Ohio St., 1;
San Mateo Co. v. So. Pac. R. R. Co., 13 Fed. 722;
State v. Smith, 63 N. E. 214—Dissenting opinion;
Santa Clara Co. v. So. Pac. R. R. Co., 18 Fed. 385;
State v. Duluth Gas & Water Co., 78 N. W. (Minn.) 1032;
Jacksonville v. McConnel, 12 Ill. 138;
People's Loan, etc. Association v. Keith, 153 Ill. 609;
People v. Worthington, 21 Ill. 171;
People v. McCreery, 34 Cal. 432;
People v. Gerke, 35 Cal. 677;
People v. Blk. Diamond Coal Co., 37 Cal. 54;
People v. Whortenby, 38 Cal. 461.

Contra,

State v. Smith, 63 N. E. (Ind.) 25; 64 N. E. (Ind.) 18, Rehearing ;
State v. Moffett, 67 N. W. (Minn.) 68; 64 Minn. 292;
Fayette Co. v. Bank, 10 L. R. A. 196;
Florer v. Sheridan, 137 Ind. 28;
Central Pac. R. R. Co. v. Board of Equalization, 60 Cal. 35.

II.

A. ***The objection that the rate is dependent upon the action of local assessing officers within whose jurisdiction complainant has no property, before whom it has no right to be heard and against whose acts, if illegal, it has no redress,*** **is based upon a false premise.** ***Argument p.*** **146.**

(1.) It proceeds upon the theory that the local officers fix and determine the rate, which is not the fact. The rate is, in fact, fixed by the legislature in carrying into effect the constitutional provision. The local officers do no act which affects directly the rate to be applied to complainant. The rate varies from year to year, with the varying of the average tax rate throughout the state, and when the tax rate in the several municipalities has become a fact of record, this rate is averaged and the result applied in the assessment of the property of complainant and similar companies.

(2.) The legislature by statute, and the people by constitutional provision, have the right to impose any tax rate they see fit. The rate imposed, the reasons for its imposition, and the basis of its measurement, are all matters of policy which do not concern the courts and which are within the exclusive jurisdiction of the legislature and the people.

Argument p. **149.**

Spencer v. Merchant, 125 U. S., 345;
McCulloch v. Maryland, 4 Wheaton, (17 U. S.) 316, 428;
Providence Bank v. Billings, 4 Peters, (29 U. S.) 563;
Wharton v. School District, 42 Penn. St. 358;
Cooley on Taxation, (2nd Ed.), 343;
Guthrie on the Fourteenth Amendment, 95 et seq.

The validity of the tax can, in no way, be dependent upon the mode the state may see fit to adopt in fixing the amount for any year. *Argument p.* 151.

Home Life Insurance Co. v. New York, 134 U. S. 594, 600;
Maine v. Grand Trunk, 142 U. S. 217, 228, 229;
Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 387;
Snyder v. Bettman, 190 U. S. 254;
Plummer v. Coler, 178 U. S., 115, 127, 134;
Cumberland & Pennsylvania R. R. Co. v. State, 92 Maryland 668, 690;
Commissioner of Railroads v. Wabash R. R. Co., 126 Mich. 115;
Legal Tender Cases, 12 Wall. (79 U. S.) 561;
State v. Terre Haute, 130 Ind. 443;
Society for Savings v. Ciote, 73 U. S. 594, 608;
State v. Haworth, 122 Ind. 466, 467.

(3.) Complainant is not without right to appear before the local reviewing board and be heard upon questions affecting its interests. *Argument p.* 153.

Michigan C. L. 1897, §§ 3852, 3853.

The authority of a property owner to object upon review to irregularity of assessments, is not limited to those of his own property. *Argument p.* 154.

Avery v. East Saginaw, 44 Mich. 590;
Dundee Mort. Trust & Invest. Co. v. Charlton, 32 Fed. 192, 194;
State v. Dodge Co., 20 Neb. 600;
St. Louis Bridge Co. v. People, 128 Ill. 428;
Detroit Common Council v. Detroit Board of Assessors, 91 Mich. 88.

The appearance to correct assessments of the general prop-

erty, is not required to be before the local officers, but might be before the tax commissioners, who have supervision of all the tax rolls of the state. *Argument p.* 154.

Act 154 *of* 1899, §§ 152, 153.

B. *The average rate system is not invalid as compelling payment of taxes by complainant based on expenditures of local governments, whose benefits it does not share, while other property owners pay taxes based on expenditures of municipalities in which their property is located.*

Argument p. 156.

The plenary authority of the legislature to use any basis of measurement it sees fit, in fixing the tax rate, is controlling here. Further:

(1.) The railroad corporations are taxed for a different purpose than property generally. The tax imposed is a distinct and particular state tax. *Argument p.* 156.

Pingree v. Auditor General, 120 Mich. 102.

(2.) Only a certain amount each year is required to maintain the state and its municipalities. The portion of this burden paid by one class, is not borne by another and the average rate system operates to equalize the burden among the classes. *Argument p.* 156.

(3.) The complainant and all other railroad companies benefit particularly from disbursements made in the local municipalities for municipal improvements and their tax rate is very properly proportioned to that borne in the local municipalities, As: *Argument p.* 157.

(*a*) The disbursement is a tax and the purpose is a public purpose, though it may apparently be confined to the municipality imposing the tax.

Argument p. 157.

(*b*) The prosperity of railroad corporations and the continuance and increase of their traffic, depend on the prosperity of the state's municipalities and the advantages afforded by them.

Argument p. 157.

(*c*) The railroad corporation is not limited in its business to the municipalities through which it runs, but draws its business from all over the state. *Argument p.* 158.

(*d*) The very elements of improvement in the local municipalities, to which complainant objects, afford greater pecuniary advantage to railroad corporations, including those having no property in the municipality, than to individuals residing there. *Argument p.* 158.

(*e*) By act 173, the state is for the purposes of its operation, created a distinct municipality and the boundaries between the different municipalities become unimportant and do not affect the question. *Argument p.* 158.

(*f*) The problem, presented in the adoption of this system, was what would be a fair and equitable rate for all the railroads in the state, taking into consideration the many municipalities in which they exist, and the discrepancy in rate, resulting if each were taxed according to the rate of the municipalities in which it had property, and not what rate one road in a particular part of the state should bear. *Argument p.* 159.

(4.) The fact that the burdens of taxation as compared with the benefits, are unequally shared, does not invalidate the taxes. If property receives any benefit, from a disbursement, however small, it can be made to share equally in the

taxation, and this, though its property is not in the municipality making the disbursement for which the tax is levied, and though some other property has been more directly benefited. *Argument p.* 159.

Foster v. Pryor, 189 U. S. 325, 331;
Wagoner v. Evans, 170 U. S. 592;
Thomas v. Gay, 169 U. S. 264;
Kelly v. Pittsburgh, 104 U. S. 78.

(5.) The state has determined that the railroad corporations receive protection and benefits from its laws equal in amount to the expenditures and taxes of the several municipalities for state, county, township, school and municipal purposes and equal to that received by other property throughout the state. This is conclusive upon this court.

Argument p. 161.

French v. Barber Asphalt Paving Co., 181 U. S. 341, 344;
Parsons v. District of Columbia, 170 U. S. 45;
Chadwick v. Kelly, 187 U. S. 544.

C. *The complainant is not denied the right of hearing on the rate of taxation, which is accorded to others.*

The function of the board of assessors in determining the tax rate, was purely ministerial, for the purpose of reducing to a certainty the rate fixed in the constitution and statutes.

Argument p. 162.

Board of Education v. State Board of Assessors, 133 Mich. 116.

(1, 2.) In the performance of ministerial functions, there is no necessity for hearing, as a hearing could not affect the result. That result must, in all instances, be the same, where the method pointed out by the statute is carried out.

Argument p. 162.

Hagar v. Reclamation District, 111 U. S. 708, 709;
Emery v. Koekuk, 72 Iowa 704.
Gillette v. Denver, 21 Fed. 824;
Reclamation District v. Phillips, 108 Cal. 314;
Hoge v. Muscatine County, 196 U. S. 280.

(3.) The Legislature designated the class and the rate of taxation it shall bear; there is no apportionment among the members of the class and no opportunity of hearing upon the rate is required to be given; full hearing has been accorded upon the assessments. *Argument p.* 164.

Spencer v. Merchant, 125 U. S. 353, 354;
Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 174;
Walston v. Nevin, 128 U. S. 582;
Paulsen v. Portland, 149 U. S. 39, 40;
Nottage v. Portland, 35 Ore. 553, 554;
Guthrie on the 14th Amendment, 96.

(4.) If the state board of assessors, in reaching the rate, pursues a wrong method or assumes an excess of authority, the property owner affected by such erroneous procurement of the rate is entitled to redress his or its grievances in the courts. This satisfies all constitutional requirements. *Argument p.* 165.

McMillen v. Anderson, 95 U. S., 37;
Glidden v. Harrington, 189 U. S., 259, 260.

D. *Act* 173 *is not invalid because of any inequality of rate.*

(1.) The system, under act 173, is capable of subjecting both classes to equality of taxation as fully as any that could be devised. Inequality, resulting from a system reasonably designed to secure equality, is without redress. *Argument p.* 166.

Travelers' Life Ins. Co. v. Connecticut 185 U. S., 364, 371;

Tappan v. Merchants' Nat'l Bank, 19 Wall. (86 U. S.), 490, 504;

State Railroad Tax Cases, 92 U. S., 575, 612;

Merchants' & Manufacturers Nat'l. Bank v. Pennsylvania 167 U. S., 461;

Atchison T. & S. F. R. R. v. Matthews, 174 U. S., 96.

(2.) Separate classification of railroad companies and their property is essential to secure equality among those corporations. If they were taxed at the rates of the local municipalities in which they possess property, the rate of taxation paid by railroad corporations owning property of identical character and put to the same use would be widely different and variations would exist as follows:

Argument p. 168.

St. Clair Tunnel, $12.82.

Michigan Air Line, $12.54.

Chicago, Milwaukee & St. Paul, $13.95.

Duluth, South Shore & Atlantic, $14.79.

Sault Ste. Marie Bridge, $25.89.

Lake Superior & Ishpeming, $26.55.

Minneapolis, St. Paul & Sault ste Marie, $28.55.

Chicago & North Western, $25.26.

(*Further comparisons may be made by reference to the table in Record, page* 476. (*Post page* 169.)

(3.) If act 173 makes a valid classification in selecting the railroad and other property subject thereto, for the purpose of applying to it a different rule of taxation than is applied to other property, there is no requirement that it impose the same rate on the property of both classes.

Argument p. 171.

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;
Clark v. Titusville, 184 U. S. 329;
Bell's Gap, etc. R. R. Co. v. Pennsylvania, 134 U. S. 232;
Home Life Insurance Co. v. New York, 134 U. S. 594;
Pacific Express Co. v. Seibert, 142 U. S. 339, 351;
Brannon on the Fourteenth Amendment, pp. 340, 352;
Guthrie on the Fourteenth Amendment, pp. 128, 130, 131.

(4.) If, in the administration of the law, any inequality results, that defect of administration does not invalidate the act itself; it is only where officers charged with the administration of the law are moved by corrupt motives, that courts give relief from illegal assessments. *Argument p.* 172.

Cummings v. National Bank, 101 U. S. 153, 161;
Central Railroad Co. v. State Board of Assessors, 48 N. J. L., 1, 7;
Dundee Mortgage & Investment Co. v. School Dist., 21 Fed. 151, 155, 156;
Wagoner v. Loomis, 37 Ohio St. 571, 578, 580;
Taylor, etc. v. Louisville & N. R. Co., 88 Fed. 350;
City of Muskegon v. Boyce, 123 Mich. 535.

E. ***The neglect to provide for equalization of the assessments of the property taxed under act 173, in the manner in which given to other property, does not violate the fourteenth amendment.*** *Argument p.* 173.

(2.) The system under act 173 is designed to secure equality of burden; all property is assessed at its cash value and

the average rate imposed upon the general property is then imposed upon that assessed under act 173. *Argument p.* 173.

(3.) The classification made by act 173 is proper and the difference in the rule of equalization applied to different classes is no greater than applied and sustained in many cases. *Argument p.* 174.

State Railroad Tax Cases, 92 U. S. 575;
Columbus, etc., R. R. Co. v. Wright, 151 U. S. 470;
Pitts. C. C. & St. R. R. Co. v. Backus, 154 U. S. 421;
Kentucky Railroad Tax Cases, 115 U. S. 321;
Florida v. Reynolds, 183 U. S. 480;
Chamberlain v. Walter, 60 Fed. 788;
Louisville & N. R. Co. v. Louisville, 29 S. W. (Ky.) 865;
Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;
Northern Pac. R. Co. v. Barnes, 2 N. D. 310, 395-397;
McHenry v. Alford, 168 U. S. 651;
Central Iowa Railroad Co. v. Supervisors, 67 Iowa 199;
Pitts. C. C. & St. L. R. R. Co. v. Backus, 154 U. S. 421;
St. L. etc., R. R. Co. v. Wrothen, 52 Ark. 529;
New York v. Barker, 179 U. S. 286;

Where all classes of property are required to be assessed at cash value, it is not necessary that equalization be granted alike to all classes. *Argument p.* 175.

Cummings v. National Bank, 101 U. S., 153, 160, 161;
Taylor v. Louisville N. R. Co., 88 Fed. 350, 370;
Wagoner v. Loomis, 37 Ohio St. 571.

(4.) The different purposes for which, and methods by which, taxation of the different classes is had, justifies different treatment in regard to equalization.

There is no occasion for equalization of the character ac-

corded in Michigan between property taxed under act 173 and that taxed generally.

The equalization is not for the purpose of affecting values, but to equitably distribute the taxes simultaneously spread. No taxes are spread simultaneously upon the railroad and general property. *Argument p.* 177.

(5.) Equalization in Michigan does not deal with under valuation. This condition is corrected by reviews, in which railroad property fully participates. *Argument p.* 178.

(6.) The men constituting the state board of assessors have supervision of all the assessments of the state with the authority to bring them to cash value; this dispenses with all necessity for equalization. *Argument p.* 178.

(7.) Equalization, so far as it affects individual rights and interests, is as fully given to railroads as to other property. *Argument p.* 178.

(8.) Equalization is only a matter of right in cases of fraudulent undervaluation; there the courts furnish it. *Argument p.* 178.

F. *The statute is not invalid in that the rate is fixed without a legislative determination of the needs in any year of the community receiving the taxes, or of the funds benefitted.* *Argument p.* 179.

(1.) The fourteenth amendment does not require a legislative determination of the needs of a particular year as a prerequisite to the validity of a tax; nor does the state constitution require it.

(2.) Here the rate is fixed by constitution and statute

which constitute, as far as it is required, a designation of the needs of government. *Argument p. 179.*

(3.) Specific and other taxes which could not, from their nature, constitute a more certain designation of the needs of government than is made in the present case, have always been imposed in Michigan. *Argument p. 180.*

(5.) Taxation of railway companies by the average rate is not novel or confined to Michigan. *Argument p. 182.*

(6.) It is not claimed that the taxes imposed under act 173 exceed the needs of government or of the fund to which devoted. *Argument p. 184.*

(7.) If the objection be of discrimination in violation of the fourteenth amendment, the answer is: *Argument p. 184.*

(*a*) That this element is as fully taken into account in fixing complainant's taxes as in fixing other taxes.

(*b*) That there are many instances of, and it has always been the practice in Michigan to subject property to taxation at, continuing rates voted in one year and applicable until repealed.

(*c*) Railroad property forms a different class, and it would be permissible to apply different rules to it in this respect, than are appplied to other property.

(*d*) If a difference exists, it is one of form and not of substance, and of such character that it might properly be made in the exercise of the right to amend corporate charters.

G. *Act* 173 *does not violate the fourteenth amendment in*

that it does not state the tax and its object while all other tax laws are required to distinctly state them.

Argument p. 186.

(1.) *It is unnecessary for this act to state the tax or its object as:*

The tax is in reality fixed in the constitution itself.

The constitutional provision, requiring the statement of the tax and its object applies only to taxes recurring annually and those imposed generally upon the entire property of the state. *Argument p. 187.*

Matter of McPherson, 104 N. Y. 306, 318;
People v. Fire Ass'n. of Phil., 92 N. Y. 311, 327;
Jones v. Chamberlain, 109 N. Y. 100;
Ford's Petition, 6 Lans. (N. Y.) 97;
Guest v. Brooklin, 8 Hun. (N. Y.) 97.

The requirement that a law imposing a tax shall state its object does not apply where the constitution fixes the object.

Argument p. 187.

Walcott v. People, 17 Mich. 68;
Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487;
Pingree v. Auditor General, 120 Mich 108, 109.—Opinion, Grant J.

(2.) *The act in question distinctly states the tax and its object.* *Argument p. 188.*

People v. Mahaney, 13 Mich. 499;
Union Trust Co. v. Wayne Probate Judge, 125 Mich. 494;
Trowbridge v. City of Detroit, 99 Mich. 443;
People v. Supervisors of Orange, 17 N. Y. 238;
Commonwealth v. Brown, (Iverson Brown's Case) 91 Va. 762, 777.

A statement of the fund benefited is a sufficient statement of the object, though the fund be general in nature.

Westinghausen v. People, 44 Mich. 267;
People v. Mahaney, 13 Mich. 499;
People v. Supervisors of Orange, 17 N. Y. 235;
People v. National Fire Ins. Co., 27 Barb. (N. Y.) 188;
Cooley on Taxation (3rd Ed.) 581.

(3.) *The fourteenth amendment in this regard is not violated as,* *Argument p. 193.*

(*a*) Act 173 states the tax and its object as fully as it is required to be stated in any tax law.

(b) The corporations taxed under act 173 form a separate class to which separate rules may be applied.

(*c*) The tax under act 173 is fixed in the constitution which is not true of other taxes.

(*d*) The New York system, which requires the statement of the tax and its object in some and not in other cases has never been thought a violation of the fourteenth amendment.

Matter of McPherson, 104 N. Y. 306, 318.

H. *The application of the same rate to all railroad companies, regardless of the local rate in the territory in which located is not unwarranted.* *Argument p. 194.*

It is more equitable to treat all railroad corporations alike, as a separate class, than to treat them differently, imposing varying rates upon them simply because of a difference in local rates. The question was one of legislative discretion.

Fifth.

The constitutional provision and statute do not deprive of property without due process of law. *Argument p. 196.*

I. *What due process requires.* As applied to matters of taxation, it has been uniformly held that any system, which gives to the party any means of questioning the validity or amount of the tax at some stage of the proceeding, either before it is determined and fixed, or to contest subsequent proceedings for collection, is due process.

Brannon on Fourteenth Amendment, 349, 350, 351;
State Railroad Tax Cases, 92 U. S. 575, 610;
McMillen v. Anderson, 95 U. S. 37;
Kentucky Railroad Tax Cases, 115 U. S. 321;
Winona, etc. v. Minnesota, 159 U. S. 537;
Pittsburgh C. C. & St. L. Ry. v. Board of Public Works, 172 U. S. 45;
Weyerhaueser v. Minnesota, 176 U. S. 556, 557;
Voigt v. Detroit, 184 U. S. 122;
King v. Portland City, 184 U. S. 69, 70;
Turpin v. Lemon, 187 U. S. 58;
Glidden v. Herrington, 189 U. S. 259, 260;
Leigh v. Green, 193 U. S. 88;
Cass Farm Company v. Detroit, 181 U. S. 396;
French v. Barber Asphalt Paving Co., 181 U. S. 324;
Tonawanda v. Lyon, 181 U. S. 389;
Detroit v. Parker, 181 U. S. 399.

II. *The statute gives the necessary opportunity for and notice of hearing.* *Argument p. 200.*

The corporations taxed are permitted to make report of the character, description and value of their property and

after assessments based upon such reports, review is had, at which every person or company interested is entitled to be heard; the statute fixing the time and place at which this review shall take place.

III. *In response to the specific objections made by complainant,*

A. *The guaranty of a republican form of government.*

(1.) The premise assumed by complainant—that its taxes are not imposed by a representative legislature—is erroneous. *Argument p.* 201.

(2.) The rate is fixed by the constitution and complainant has had full representation. The right of suffrage is not essential to the validity of taxing statutes. *Argument p.* 201.

Cooley on Taxation (3rd ed.), 96;
Thomas v. Gay, 169 U. S. 264, 275;
Wheeler v. Wall, 6 Allen (Mass.) 558;
Smith v. Macon, 20 Ark. 17.

(4.) Act 173 is not objectionable as being taxation without representation: *Argument p.* 202.

(*a*) The guaranty, to every state, of a republican form of government, was not a guaranty of any rigidly fixed form of government, but of one similar to that existing in the several states at the time of the adoption of the constitution.

Story on Constitution (5th ed.), § 1841;
Cooley Constitution Limitations (7th ed.), 238;
Minor v. Happersett, 88 U. S. 162, 175.

(*b*) The guaranty was not intended to guard individual rights and interests but was to the states, as states.

Documentary History, Con. of U. S., pp. 19, 64, 108, 123, 370, 371, 322, 456, 651, 652, 732;
Cooley Constitutional Limitations (7th ed.), 45;
Kadderly v. Portland, 74 Pac. 710, 719;
Story on Constitution (5th ed.), § 1815;
Tucker on Constitution, p. 638;
Texas v. White, 74 U. S. 700, 720, 721.

(*c*) Questions of whether a government exists or is republican in form are not properly presented to the judiciary. The nature of the thing attempted to be secured, the means, methods and action and judgment for securing it are political in character, to be determined by Congress and not the courts.

Luther v. Borden, 7 How. 39, 42, 47, 57;
Texas v. White, 74 U. S. 700, 730;
White v. Hart, 13 Wall. 649, 652;
Tucker on Constitution, p. 637, 638;
Story on Constitution (Cooley's note) p. 593, 5th Ed.;
Cooley Constitutional Limitations (7th Ed.) pp. 237, 238.

B. (1.) *No hearing on the rate of taxation is essential* as the rate is fixed in the constitution and by the legislature in the exercise of governmental powers. *Argument p. 208.*

Spencer v. Merchant, 125 U. S. 345;
Hagar v. Reclamation District, 111 U. S. 701;
French v. Barber Asphalt Paving Co., 181 U. S. 341, 344;
Williams v. Eggleston, 170 U. S. 311;
Parsons v. District of Columbia, 170 U. S. 45-50;
Paulsen v. Portland, 149 U. S. 39-40;
Judson on Taxation, Sec. 377 et seq., p. 467.

(2.) As the determination of the average rate was ministerial, a hearing thereon could not alter the result and was not required. *Argument p.* 211.

(3.) Complainant has not averred or shown any injury from the application of this method. As a prerequisite to injunction to restrain the collection of taxes, it must make clear that it ought not, in equity, to pay taxes from which it asks relief. *Argument p.* 211.

Mercantile National Bank v. Hubbard, 98 Fed. 465, 469;
Musselman v. Logansport, 29 Ind. 533;
Cowell v. Doub, 12 Cal. 273;
Anderson v. City of Mayfield, 93 Ky. 230, 237, 238;
Streight v. Durham, 10 Okl. 361, 373; 61 Pac. 1096, 1100;
Dundy v. Richardson Co. Comrs., 8 Neb. 508, 519;
South Platte Land Co. v. Crete, 11 Neb. 344, 347;
Jones v. Summer, 27 Ind. 511;
Porter v. R. R. I. & St. L. R. Co., 76 Ill. 596;
Conway v. Younkin, 28 Iowa 295;
Warden et al. v. Supervisors, 14 Wis. 618;
Miltimore v. Supervisors, 15 Wis. 10;
See Cooley on Taxation (3rd Ed.) 1443 and cases cited.

C. *The tax is not an arbitrary forced contribution.* *Argument p.* 212.

Sixth.

I.

Interstate commerce is not interfered with.

Argument p. 213.

While the states have no authority to interfere with transportation between the states, to impose any restraint upon the right, privilege, occupation or business of engaging therein or to burden the receipts therefrom, the rule is now placed beyond question, that they have full authority to tax property used in, and instrumentalities of, interstate commerce, regardless of such use, or that the larger portion of the value upon which tax is laid originates in such interstate use.

This right has been sustained as to:

Railroads:

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421;

Cleveland C. C. & St. L. Ry Co. v. Backus, 154 U. S. 439;

Delaware Railroad Tax, 85 U. S. 206, 231, 232.

Cars:

Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149;

American Refrigerator Transit Co. v. Hall, 174 U. S. 70; s. c. 24 Col. 300;

Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 19;

Marye v. B. & O. R. R. Co., 127 U. S. 117.

Bridges:

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 623;

Pittsburgh, etc. Ry. Co. v. Board of Public Works, 172 U. S. 32;

Henderson Bridge Company v. Henderson City, 141 U. S. 689.

Express Companies' Property:

Adams Express Co. v. Ohio, 165 U. S. 194;

Adams Express Co. v. Ohio, 166 U. S. 185;

Adams Express Co. v. Kentucky, 166 U. S. 171, 180;

Fargo v. Hart, 193 U. S. 490.

Telegraph Lines and Property:

Western Union Tel. Co. v. Missouri, 190 U. S. 412;

Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 163;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;

Western Union Tel. Co. v. Mass., 125 U. S. 590;

Western Union Tel. Co. v. Mass., 141 U. S. 40.

Steamships:

Transportation Company v. Wheeling, 99 U. S. 273;

Moran v. New Orleans, 112 U. S. 69.

The rule extends so far as to permit the states, where taxing property engaged in, and instrumentalities of, interstate commerce, to include the intangible value resulting from interstate commerce. *Argument p.* 214.

Atlantic & Pacific Tel. Co. v. Phil., 190 U. S. 160, 163;

Western Union Tel. Co. v. Missouri, 190 U. S. 412, 422;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Henderson Bridge Co. v. Kentucky, 166 U. S. 151;

Adams Express Co. v. Ohio, 166 U. S. 186; s. t. 165 U. S. 194;

Central Pacific R. R. Co. v. California, 162 U. S. 91;

New York L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 437;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 698;

Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 446, 447;

Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 232.

The attitude of this court has been to sustain, if possible, statutes apparently imposing a burden on interstate transportation, or receipts therefrom. Where it has been possible to say that the tax, while not directly imposed on, was on account of, property, the corporation owned and which received protection of the laws, within the state, the court has done so and has sustained taxes where the amount was determined by reference to receipts, capital stock, or other elements. *Argument p.* 216.

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 696, 697;

New York, L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 438, 439;

Western Union Tel. Co. v. Mass., 125 U. S. 530, 552;

Pullman Palace Car Co. v. Penn., 141 U. S. 18, 25;

Adams Express Co. v. Ohio, 165 U. S. 220;

Maine v. Grand Trunk Ry. Co., 142 U. S. 217.

See also:

Fairbank v. United States, 181 U. S. 297;

State Tax on Railway Gross Receipts, 15 Wall. (82 U. S.) 284.

II.

The mileage basis of apportionment prescribed in the statutes is proper. *Argument p.* 219.

A. A railroad system may, for purposes of taxation, be treated and valued as a unit, the whole contributing to the value of every part; and where it extends into several states, the value may be apportionated among the several states, on

a mileage basis. Statutes using this basis of apportionment are in force in many states.

Adams Express Co. v. Kentucky, 166 U. S. 171, 180.

To the use of a strict mileage basis there are only two exceptions; it cannot be applied: *Argument p.* 220.

First—So as to bring, within the taxing state, property not connected with or a part of the railroad business and which has an actual situs in some other state, nor,

Second—Where, by reason of the existence of valuable terminals in one state, which contribute to and greatly enhance the value of the system, its application would be unfair, as bringing within the taxing state a greater proportion of the value than that state would equitably be entitled to.

Fargo v. Hart, 193 U. S. 500;

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421, 431;

Western Union Telegraph Company v. Taggert, 163 U. S. 1, 23;

Adams Express Company v. Ohio, 165 U. S. 194-221.

B. The statute does not require apportionment among the states on an absolute mileage basis, but permits apportionment, in accordance with the fact, on the judgment of the board of assessors. *Argument p.* 220.

C. Complainant has in no way overcome the presumption in favor of the validity of the assessment and apportionment made. *Argument p.* 221.

D. The act permits the board of assessors to exercise their discretion in making the apportionment; that discretion,

when once exercised, is absolute and cannot be overcome except in cases of fraud. *Argument p. 223.*

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 436;

Maish v. Arizona, 164 U. S. 611;

McLeod, et al. v. Receiver, 71 Fed. 458;

Adams Express Co. v. Ohio, 165 U. S. 229.

Seventh.

The system of taxation, invoked by act 173, as applied to railroad corporations, is a proper exercise of the right to amend corporate charters. *Argument p. 226.*

(1.) Act 173 of 1901, when passed, became a part of the charters and governing law of Michigan railroad corporations. *Argument p. 226.*

New York & New Eng. R. R. Co.'s Appeal, 62 Conn. 527, 538;

Columbia, etc. R. R. Co. v. Gibbes, 24 S. C. 60, 73;

Alabama & V. Ry. Co. v. Odeneal, 73 Miss. 34;

St. L., I. M. & S. Ry. Co. v. Paul, 64 Ark. 83, 95 Id., 173 U. S. 404;

Northern Central Ry. Co. v. Maryland, 187 U. S. 258, 268, 269;

State v. Northern Central Ry. Co., 90 Md. 447, 469;

Bangor, Oldtown & Milford R. Co. v. Smith, 47 Me. 34, 48, 49;

Durand v. N. H. & N. Co., 42 Conn. 211, 223;

City of Roxbury v. Boston, etc. R. R. Co., 60 Mass. 432;

St. Albans v. Car Co., 57 Vt. 82;

Tomlinson v. Jessup, 82 U. S. 454, 457;

Leep v. Railway Co., 58 Ark. 407;

Stearns v. Minnesota, 179 U. S. 260, (Dissenting opinion);

Penn. R. R. Co. v. Duncan, 111 Pa. St. 352.

The general railroad law and act 173 of 1901 are *pari materia,* to be read and construed as one enactment.

Argument p. 232.

Chicago R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 696;

McHenry v. Brett, 9 N. D. 68, 70;

Dennison v. Allen, 106 Mich. 295;

Shannon v. People, 5 Mich. 36, 50;

Ryan, et al. v. Carter, et al., 93 U. S. 78, 84;

Alexander v. Mayor, 5 Cranch, 7;

Hendrix v. Rieman, 6 Neb. 517, 522;

Black on Interpretation of Laws, p. 204, Sec. 86.

(2.) *The reservation of the right to alter, amend or repeal and its effect generally.* *Argument p.* 232.

These reservations have been before the state supreme court in numerous cases, and that court has been uniform in its decisions to the effect that all acts of incorporation, and rights dependent upon their continued existence, are subject, to this reserved power and, in all particulars to legislative control.

Argument p. 233.

Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 140, 147;

Detroit St. Rys. v. Guthard, 51 Mich. 180, 182;

Detroit v. Railway Co., 76 Mich. 421, 426;

Mason v. Perkins, 73 Mich. 303, 318;

Bissell v. Heath, 98 Mich. 472, 478;

Attorney General v. Looker, 111 Mich. 498, 501; affirmed, 179 U. S. 46;

Smith v. Lake Shore & M. S. Ry. Co., 114 Mich. 460, 462.

The Federal cases upholding the right of the state to repeal, alter or amend corporate charters where the right to do so is reserved, sustain the propositions:

Argument p. 234.

(*a*) Where the right to repeal, alter or amend is reserved, the corporate charter and all rights and privileges held thereunder are subject to legislative control, and may be repealed or taken away at the will of that body.

(*b*) Vested rights, cannot be impaired under such a reserved power, but the power may be exercised and to almost any extent, to carry into effect the original purpose of the grant, to protect the rights of the public and the corporators, or to promote due administration of the affairs of the corporation.

Union Passenger Ry. Co. v. Philadelphia, 101 U. S. 528;
Hoge v. Railway Co., 99 U. S. 348, 351;
Greenwood v. Freight Co., 105 U. S. 13;
Railroad Co. v. Maine, 96 U. S. 499;
Louisville Water Co. v. Clark, 143 U. S. 10, and cases cited;
Sinking Fund Cases, 99 U. S. 700;
Pearsall v. Great Northern Ry., 161 U. S. 663;
Covington v. Kentucky, 173 U. S. 232, and cases cited;
Citizens Savings Bank v. Owensboro, 173 U. S. 636, and cases cited;
Tomlinson v. Jessup, 15 Wall. 454;
United States v. Union Pacific Ry., 160 U. S. 37, and cases cited.

See also:

Miller v. State, 82 U. S. 478, 499;
Holyoke Co. v. Lyman, 82 U. S. 500;

Pennsylvania College Cases, 80 U. S. 190;
Spring Valley Water Works v. Schottler, 110 U. S. 347;
Bienville Water Supply Co. v. Mobile, 186 U. S. 222;
St. L. I. M. & S. Ry. Co. v. Paul, 173 U. S. 404;
New Jersey v. Yard, 95 U. S. 104;
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 271.

(3.) The argument contains an enumeration of amendments made and action taken pursuant to the reserved right.
Argument p. 236.

(4.) The authority is not without limit; the exceptions to and limitations upon it have been established to be: that the regulation shall not, be oppressive, unfair or unreasonable (of which it would seem the legislature must judge), deprive the corporation of vested rights or property or interfere with existing contracts, and, in the exercise of the power to amend, shall not essentially impair the object of the incorporation.

These, only, are the limitations established and unless the authority, attempted to be exercised in this instance, falls within them, it follows that the legislature was well within its power in the enactment of the statute in question.

The reservation of this right is not the mere retaining of a right of control, but forms a condition of the contract between state and corporation. That corporate charters create contracts is amply sustained. In cases of the reservation of the right to alter, amend, or repeal, the relation is none the less that of contract; but in, and part of, that contract is the reservation by which the state has secured the right to make and the company has consented to subsequent alterations by the legislature.

Hoge v. Railroad Co., 99 U. S. 353;

Louisville Water Works Co. v. Clark, 143 U. S. 1;
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 270.

Being part of the contract, it gives the legislature authority, subject to constitutional limitations protecting property rights and contract obligations, to enact any regulation or restriction which will not impair the purpose of the contract, i. e. the object of the incorporation, and it is not for the corporation to object on the ground that equal protection of the law is denied. It has contracted that the state might alter the existing contract, and having done so it is not open to it to claim that, because regulations, exactions or restrictions are imposed upon or required of it and its property, not required of property owners generally, it is denied equal protection. *Argument p.* 240.

St. Louis I. M. & St. P. Ry. Co. v. Paul, 173 U. S. 408-9;
Leep v. Railway Co., 58 Ark. 407;
Atchison T. & S. F. R. R. v. Matthews, 174 U. S. 104;
Woodson v. State, 69 Ark. 521, 528;
Skinner v. Garnet Gold Mining Co., 96 Fed. 744.

(5.) The validity of the act as applied to railroad corporations is not dependent on its validity as applied to other corporations affected by it. *Argument p.* 242.

Pittsburgh, etc. R. R. Co. v. Montgomery, 152 Ind. 1, 13;
Tullis v. Lake Erie & Western R. Co., 175 U. S. 348, 351;
Leep v. Railway Co. 58 Ark., 407, 408; see also 173 U. S. 407.

Eighth.

The system of taxation under act 173 *does not violate the state constitution.* *Argument p.* 244.

A. *Considerations applying specifically to the uniformity provision.* *Argument p.* 244.

(1.) The purpose of the constitutional amendment was to permit a separate and uniform rule to be applied to the property taxed under act 173. *Argument p.* 244.

(2.) If but one uniform rule were intended, no change in the constitution would have been necessary. *Argument p.* 245.

(3.) The structure of section 11, of article XIV of the constitution, as amended, excepts the property assessed by a state board of assessors from the uniform rule applied to property generally. Ordinarily a proviso is an exception to language preceding it. *Argument p.* 245.

Minis v. United States, 15 Peters, 445;
Carroll v. State, 58 Alabama, 401;
Sloat v. McComb, 42 N. J. Law, 484.

(4.) Had the constitution intended the property taxed under act 173 to be assessed according to the uniform rule applied to property generally, the requirement would have been "*the* uniform rule," instead of "*a* uniform rule."

Argument p. 246.

(5.) The uniform rule has always permitted exemptions to one class of property not given to another.

Argument p. 246.

B. *Considerations attaching specially to the requirement of cash value.* *Argument p.* 247.

(1.) A deduction of credits to the amount of debts is not a rule of valuation, but an exemption. *Argument p. 247.*

(2.) If the deduction of debts from credits be held to amount to a rule of valuation, the effect is invalidity of the general law permitting the deduction instead of invalidity of act 173. All property assessed generally is subject to one uniform rule and if a deduction constitutes a rule of valuation, deductions cannot be given to credits, in applying that uniform rule, which are not given to other property.

Argument p. 247.

That deduction of debts from credits has always been practiced in Michigan, leads conclusively to the result that permitting the deduction to one and not another class does not apply different rules of valuation or violate the requirement of assessment at cash value. *Argument p. 248.*

St. Joseph v. St. Joseph National Bank, 46 Mich. 526;

Fayette County Treasurer v. Peoples' Bank, 47 Ohio State, 503;

Hubbard v. Brush, 61 Ohio State, 252.

(3.) The deduction of credits to the amount of indebtedness is an exemption, rather than a rule of valuation, which is permitted. *Argument p. 248.*

People v. Auditor General, 7 Mich. 90,

Walcott v. People, 17 Mich. 92;

East Saginaw Salt Mfg. Co. v. E. Saginaw, 19 Mich. 292-3;

National Loan & Investment Co. v. Detroit, 136 Mich. 451; 99 N. W. 380;

Board of Supervisors v. Auditor General, 65 Mich. 411.

(4.) Only property assessed is required to be at cash

value and property may be omitted without violating the cash value rule. *Argument p.* 249.

C. *Considerations applicable to both the uniformity and cash value provisions of the state constitution.*

(1.) The contemporaneous history of the adoption of act 173, conclusively fixes the status and construction in this regard of the constitutional amendments. The Atkinson Bill (Appendix) had just been declared unconstitutional and the amendments were made to admit the passage of such an act as that bill (which made the same provision with regard to credits as does act 173) had been. *Argument p.* 249.

(2.) The constitution and statute are to be so construed as to stand together and *both* must be so limited or enlarged as to permit the act to stand. *Argument p.* 250.

(3.) The legislature in enacting act 173 has construed the constitution and the state court has accepted this construction as binding upon it. *Argument p.* 252.

(4.) State constitutions are limitations upon, not grants of, power and the limitations will not be extended by construction. *Argument p.* 253.

(5.) Though act 173 does, in not making provision for the deduction of debts from credits, contravene the state constitution, the act is not therefore void, but voidable. *Argument p.* 254.

(6.) The statute must be regarded as valid in any event, unless it appear that complainant possesses credits which should have been deducted and that the deduction was claimed at the proper time. *Argument p.* 254.

(7.) The board of assessors did not include credits in making their assessments. *Argument p.* 255.

ARGUMENT.

FIRST.

The fourteenth amendment; what it permits and requires in matters of taxation.

A. *The power of taxation in general.* The taxing power of the state is one of its highest attributes of sovereignty and is essential to its continued existence. It is not derived from, but exists in the states independently of, the United States constitution and may be exercised to an unlimited extent, upon all property, trades, business and avocations carried on within the territorial boundaries of the state except so far as it has been surrendered to the Federal government, either expressly or by necessary implication.

Union Pacific R. R. Co. v. Peniston, 18 Wall (85 U. S.), 5, 29, 30;
Mc'Culloch v. State, 4 Wheaton (17 U. S.), 316, 428;
Picard v. East Tenn., etc. R. R. Co., 130 U. S. 641.

The power of taxation is one of the most essential to a state and one of the most extensive in its operation; where it exists it is a right which in its nature recognizes no limit.

Weston v. Charleston, 2 Peters (25 U. S.), 466.

The power of taxation is of vital importance; it resides in the government as part of itself and is essential to its existence, being granted by all for the benefit of all.

Providence Bank v. Billings, 4 Peters (27 U. S.), 351, 353.

B. *The fourteenth amendment in general.* This amendment was not designed or intended to limit the taxing powers of the states but for an entirely different purpose, as is indicated by the history of its enactment and the early decisions. It was adopted in 1868; in 1872 it was said to be confined

in operation to the protection of the newly emancipated negrò; (Slaughter House Cases, 16 Wall (83 U. S.) 36, 81). in 1873 it was said,

> "The exercise of the authority which every state possessed to tax its corporations and all their property, real and personal, and their franchises and to graduate the tax upon the corporations according to their business or income or the value of their property, when this is not done by discriminating against rights held in other states, and the tax is not on imports, exports or tonnage, or transportation to other states cannot be regarded as conflicting with any constitutional power of congress." (Delaware Railroad Tax, 18 Wall. (85 U. S.), 206, 232.)

In 1877 it was said that, "The Federal Constitution imposes no restraints on the states" in regard to unequal taxation, but its enlargement, to apply generally in matters of police regulation has included tax regulations until it has now become settled that the fourteenth amendment does impose restraints upon the states in regard to taxation, and requires that in its imposition due process and equal protection of the laws shall be observed. The question, therefore, becomes what does due process and equal protection require in matters of taxation.

The amendment as limiting the states in regard to taxation, must be strictly construed and the taxing regulations be construed liberally. This has always been the applied rule, and in view of the fact that the amendment was not adopted for the purpose of limiting the power of the states in this regard, it is a proper one. So uniformily has the rule been applied that there is no decision of this court setting aside the taxing system of a state on the ground of its violation of the fourteenth amendment.

C. *Strong presumptions favor the validity of taxing statutes.* A presumption of constitutionality of course follows all statutes but, for reasons arising from the character and necessity of taxation, it being one of the highest attributes of sovereignty and essential to the continued existence of government, before the power can be said to have been improperly exercised, the violation of the fundamental law must be so palpable as to amount to spoliation under the guise of taxation. The rule has been aptly expressed by this court in *Henderson Bridge Co. v. Henderson City* (173 U. S., 592, 614, 615), where it was said:

> "But in order to bring taxation imposed by a state or under its authority within the scope of the Fourteenth Amendment of the National Constitution, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the guise of exerting the power to tax. As an act of Congress should not be declared unconstitutional unless its repugnancy to the supreme law of the land is too clear to admit of dispute, so a local regulation under which taxes are imposed should not be held by the courts of the Union to be inconsistent with the National Constitution, unless that conclusion be unavoidable. All doubt as to the validity of legislative enactments must be resolved, if possible, in favor of the binding force of such enactments."

Similar language is used in *King v. Mullins* (171 U. S. 404, 435, 436) where, in refusing to declare a state taxing statute unconstitutional as violating the fourteenth amendment, it was said:

> "The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in pal-

pable violation of the constitutional rights of the owners of property."

See, Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 562, 563;

San Diego Land & Town Co. v. National City, 174, U. S. 754;

Florida Central, etc. R. R. Co. v. Reynolds, 183 U. S. 479;

Central Pacific Ry. Co. v. Evans, 111 Fed. 76.

D. *Classification is permitted.* The complainant's case is principally directed to the impropriety of the classification which the statute makes and to the application of different methods and incidents of taxation, to the different classes. We have, therefore, considered it appropriate to examine the cases upon this question which we think has been settled, at some length.

The fourteenth amendment to the Federal constitution was not designed or intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways, nor intended to compel the states to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation or the imposition of different rates upon different classes; but that amendment permits, classification for purposes of taxation, the application of different rules of assessment, valuation and review to different classes and the imposition of different rates thereon; and it is sufficient that all persons within the same class are treated alike and that there is no discrimination in favor of one as against another of the same class.

Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232;

Giozza v. Tiernan, 148 U. S. 657, 662;

Adams Express Co. v. Ohio, 165 U. S. 228;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293;

Billings v. Illinois, 188 U. S. 97, 102, 103.

In *Giozza v. Tiernan* (148 U. S. 662), it was said:

> "Nor, in respect to taxation was the amendment intended to compel the State to adopt an iron rule of equality; to prevent the classification of property for taxation at different rates; or to prohibit legislation in that regard, special either in the extent to which it operates or the objects sought to be obtained by it."

In *Bell's Gap R. R. Co. v. Pennsylvania*, (134 U. S. 237), the statute subjected all moneyed securities to an annual state tax of three mills on the dollar of actual value, while bonds and other securities issued by corporations were taxed at three mills on the dollar of nominal or par value, which was claimed to constitute discrimination in violation of the fourteenth amendment. The court, upholding the statute, said:

> "the law does not make any discrimination in this regard which the State is not competent to make. All corporate securities are subject to the same regulation. The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and gen-

eral usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. * * * We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the States to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt."

In *Magoun v. Illinois Trust & Savings Bank* (170 U. S. 293, 294) the inheritance tax statute of Illinois provided a tax on inheritances, graduated with reference to the degree of relationship and amount of legacy or bequest received; the more remote the relationship and the greater the beneficial interest received, the larger the tax, which varied from one to six dollars on every hundred dollars of value. The court held the legislation constitutional, and emphatically affirmed the doctrine that the fourteenth amendment, permits reasonable classification for purposes of taxation and the imposition of different rates upon the several classes, and, simply requires, the same means and methods to be applied impartially to all the constituents of a class, and that the law operate equally and uniformly upon all persons in similar circumstances. Mr. Justice McKenna, in regard to the rule of the fourteenth amendment, said:

"The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute

of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances, it may not tax A more than B, but if A be of a different trade or profession than B, it may. * * * The State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion."

> Merchants & M. Nat. Bank v. Pennsylvania, 167 U. S. 461;
> Kentucky Railroad Tax Cases, 115 U. S. 321;
> Home Insurance Co. v. New York, 134 U. S. 594;
> Gulf, etc. Ry. Co. v. Ellis, 165 U. S. 150;
> Clark v. Titusville, 184 U. S. 329;
> American Sugar Refining Co. v. Louisiana, 179 U. S. 89;
> New York v. Barker, 179 U. S. 279;
> Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;
> Travelers' Life Ins. Co. v. Conn., 185 U. S. 364;
> Kidd v. Alabama, 188 U. S. 730;
> Cook v. Marshall County, 196 U. S. 269;
> Coulter v. Louisville & N. R. Co., 196 U. S. 608, 9;
> Field v. Barber Asphalt Pav. Co., 194 U. S. 621, 2.

In *Merchants and M. Nat. Bank v. Pennsylvania* (167 U. S. 461), it was held that a rate of 8 mills on the par value of stock did not unduly discriminate between banks whose stock was at or below par and those whose stock was much above par.

In *Kentucky Railroad Tax Cases* (115 U. S. 321), a different rule and method of taxation and review was held properly applied to railroad real estate than to other real estate. Different rules of valuation were also held properly applied.

In *Home Insurance Co. v. New York* (134 U. S. 594) it was

held that a New York statute selecting corporations for taxation upon their "franchise and business" at a graduated rate, dependent upon the amount of dividends and character of stock, did not contravene the fourteenth amendment as it treated all in similar circumstances alike.

In *Gulf, etc. Ry. Co. v. Ellis* (165 U. S. 150), the text was amply sustained in holding a statute invalid which imposed upon railroads an attorney fee as a penalty for a refusal to pay debts, which was not imposed upon others. The decision was placed upon the ground that as general debtors railroads are not differently situated from other debtors.

In *Clark v. Titusville* (184 U. S. 329), a statute imposing a graduated tax or license fee dependent in amount upon the amount of business transacted was held valid.

In *American Sugar Refining Co. v. Louisiana* (179 U. S. 89), a statute taxing the business of refining sugar and molasses and exempting from its operation "planters and farmers grinding and refining their own sugar," was held to make a reasonable and valid classification.

In *New York v. Barker* (179 U. S. 279), a different rule was applied to the correction of corporate assessments than to individual assessments, and was held valid.

In *Charlotte, etc. R. R. Co. v. Gibbes* (142 U. S. 386), a statute classifying railroad companies by themselves and imposing upon them the entire expense of a state railroad commission, was held valid.

In *Travellers' Life Insurance Co. v. Connecticut* (185 U. S. 364), it was held proper to apply a different rate to stock in insurance companies held by non-residents than where held by residents and to make deductions of the value of land owned by the corporation in one but not in the other case where the taxes imposed on the stock held by residents were for local purposes and on that held by the non-residents for state purposes.

In *Kidd v. Alabama* (188 U. S. 730), different rules of taxation were permitted of stock held in the state, of foreign corporations not doing business in the state and that of domestic corporations and those foreign corporations doing business in the state.

In *Cook v. Marshall County* (196 U. S. 269), it was held proper to apply a system in the taxation of retailers not applied in case of wholesalers.

In *Coulter v. Louisville & Nashville Ry. Co.* (196 U. S. 608, 609), it was held proper to apply a different rate to franchises of corporations than to tangible property.

E. *Limitations upon the power of classification.* The power of classification under the amendment, both in making general police regulations and in taxation, is not without limit. The governing rule in general is stated by Mr. Justice Brewer in *Gulf, etc. Ry. Co. v. Ellis* (165 U. S. 155), to be that,

> "Classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made without any such basis."

In *Connolly v. Union Sewer Pipe Co.* (184 U. S. 559), it was said:

> "The guaranty of the equal protection of the laws means that no persons or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."
>
> Missouri v. Lewis, 101 U. S. 22;
> Barbier v. Connolly, 113 U. S. 27;
> Duncan v. Missouri, 152 U. S. 337, 382.

In *Giozza v. Tiernan* (148 U. S. 662), it is stated:

> "It is enough that there is no discrimination in favor of one as against another of the same class. Bell's Gap

Railroad v. Pennsylvania, 134 U. S. 232; Home Insurance Co. v. New York, 134 U. S. 594; Pacific Express Co. v. Seibert, 142 U. S. 339. And due process of law within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

F. *Comparison of the power of classification as applied to taxation, with the power as applied in police and other regulations.* It must be emphasized that this statute is one of taxation; that different considerations move the courts in determining the validity of statutes making classifications for taxation purposes and those making classifications for other purposes, such as police regulations; that the decisions which are conclusive upon the question of classification for police regulations are not necessarily applicable in matters of taxation; that in matters of taxation, the application given to the amendment by the courts is consistent with a very wide discretion in the legislatures of the states; that taxation systems must clearly violate the amendment to meet the disapproval of the courts; that where there is any difference in the classes to which different rules and incidents are applied, which bears any relation to the purpose of the classification made, the courts will not inquire into the necessity or propriety of the classification, but will leave those subjects to the legislative discretion. These rules have always been at least tacitly recognized by this court, and in certain recent cases have found affirmative and emphatic support. The distinction between taxing and other statutes, and the degree of finality to be accorded to the legislative judgment in the former instance, are expressly recognized in *Connolly v. Union Sewer Pipe Co.* (184 U. S. 562, 563), where the anti-trust law of Illinois was declared unconstitutional as denying equal protection of the laws by reason of discrimination in exempting from its provisions, agricul-

turalists and life stock dealers or raisers. There those contending for the constitutionality of the law cited similar cases. [*American Sugar Refining Co. v. Louisiana*, (179 U. S. 89); *Magoun v. Illinois Trust & Savings Bank* (170 U. S. 283).] of classification for purposes of taxation and insisted that the same rules should be applied to the case before the court.

The court distinguished the cases on the ground that the previous cases related to taxation; and of *American Sugar Refining Co. v. Louisiana;* said

"We said in that case: 'The power of taxation under this provision was fully considered in Bell's Gap Railroad Company v. Pennsylvania, 134 U. S. 232, in which it was said not to have been intended to prevent a State from changing its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property altogether; may impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. All such regulations, and those of like character, so long as they proceed within reasonable limits and *general usage*, are within the discretion of the state legislature or the people of the state in framing their constitution.' * * * The decision now rendered is not at all in conflict with the views expressed in the two cases just cited. It is sufficient to say that those cases had reference to the taxing power of the State, and involved considerations that could not, in the nature of things, apply to a state enactment like the one involved in the present case. The power to tax persons and property is an incident of sovereignty, and the extent to which it may be exerted has been indi-

cated in numerous cases. Taxing laws, it has been well said, furnish the measure of every man's duty in support of the public burdens and the means of enforcing it. A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the State. A State may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class, if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade, to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the expenses of government and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the

operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of clasification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates." (184 U. S. 562, 563.)

Billings v. Illinois, 188 U. S. 102.

Cook v. Marshall County, 196 U. S. 274.

The case of *Billings v. Illinois* (188 U. S. 102), is strongly illustrative of the principle that in matters of taxation the legislative judgment, of the necessity of classification and in the selection of the persons property or institutions to form the classes, is to govern where there is any basis for it whatever. There the Illinois inheritance tax statute was before this court. If there could be a case of obnoxious classification because of inequality, where any difference existed between the constituents of the different classes, it was found in that statute. A life tenant with a remainder to a lineal descendant was taxed; a life tenant with a remainder to a collateral heir was not taxed. It is true that there was a slight difference in the constituents of the separate classes (taking their interest and estate as influenced by the relationship, of their successors to the property, to the person deceased), but it was not a difference which in any way affected the value or use or character of the estate taxed to the party taxed, or his interest therein in that respect, and the amount, character and value of enjoyment was identical in the two classes as also the estate which each class took, and yet the classification was held proper and the rule of *Connolly v. Union Sewer Pipe Co.* (184 U. S. 562, 563) was affirmed.

The case of *Cook v. Marshall County* supra, furnishes a very recent expression on the subject. There it was said of the effect of cases passing upon the validity of police regulations,

"These cases, however, have but limited application to laws imposing taxes where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism. * * * This distinction was recognized by Mr. Justice Harlan in Connolly v. Union Sewer Pipe Co. * * * It can scarcely be doubted that if the Connolly Case had dealt with the subject of taxation, a discriminative tax upon the producers of agricultural products, either greater or less than that imposed on other manufacturers or producers might have been held valid without denying to either party the equal protection of the laws." (196 U. S. 274.)

SECOND.

The classification made by act 173 is based upon such reasonable differences of property, situation, circumstance, or use, as to satisfy the requirements of the fourteenth amendment.

A. We will consider the question from the standpoint of the classification as applied to railroad corporations as complainant in the present case is a corporation organized under the railway laws and doing a general railroad business. The act in question has selected for the purposes of its operation the property of the corporations therein enumerated, (railroad, union station and depot, express, car-loaning, stock car, refrigerator car and fast freight-line companies), to the exclusion of the property of other persons and corporations

It, therefore, remains to be considered whether the situation and condition of the corporations enumerated and their property, are sufficiently different, from other corporations and individuals and their property, to justify the application, to their property, of a separate and distinct rule of taxation from that applied to such other property. We attempt to show that classification applying a separate rule of taxation to the corporations selected by act 173, is valid, based on material and inherent differences in the nature and character of the corporations taxed and their property and its use, and complies with the requirement, of equal protection of the laws, of the fourteenth amendment.

In this instance, each corporation selected in forming the separate class is what may be termed "a pubiic service corporation" which, taken in connection with the nature of the property of these corporations, scattered through the several municipalities of the state, possessing peculiar rights and enhanced in value by franchises, seems sufficient, in itself, to justify the classification.

That the fourteenth amendment, as applied to railroad corporations, permits separate classification of those corporations and their property, for purposes of taxation, must be regarded as placed at rest by the Federal cases, and the laws of the several states have uniformly provided separate and distinct systems and rules of taxation for railroad property, which have been generally sustained:

State Railroad Tax Cases, 92 U. S. 575;

Kentucky Railroad Tax Cases, 115 U. S. 321 (81 Ky. 492, 512);

Columbus Sn. Ry. Co. v. Wright, 151 U. S. 470,—s. c. 89 Ga. 574;

Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421,—s. c. 133 Ind. 625;

Northern Pacific R. R. Co. v. Barnes, 2 N. D. 310, 395, 396, 397;

McHenry v. Alford, 168 U. S. 651, 665, 673;

Florida, etc. R. R. Co. v. Reynolds, 183 U. S. 480;

Missouri River, etc. R. R. Co. v. Morris, 7 Kan. 210;

State Board of Assessors v. Central R. R. Co., 48 N. J. L. 146, 278, 280, 290, 300, 313;

Central Iowa Ry. Co. v. Board of Supervisors, 67 Iowa 199;

City of Dubuque v. C. D. & M. R. R. Co., 47 Iowa 200;

Owensboro & N. Ry. Co. v. Davies County, 3 S. W. (Ky.) 164;

Ames v. People, 56 Pac. (Col.) 656;

Yazoo & M. V. R. Co. v. Adams, 25 So. 355;

Louisville & N. R. Co. v. City of L., 29 S. W. (Ky.) 865;

St. Louis, etc. Ry. Co. v. Worthen, 52 Ark. 529;

Chamberlain v. Walter, 60 Fed. 788;

Sawyer v. Dooley, 21 Nev. 390, 398;
State v. Severence, 55 Mo. 378;
Elliott on Railroads, § 740 and cases cited;
Guthrie on the 14th amendment, p. 113, and cases cited;
Cooley on Taxation (3rd ed.) 72 et seq.

In the *State Railroad Tax Cases* (92 U. S. 611, 612), a statute of Illinois made provision for the assessment of the property of railroad companies by a system different from that governing the taxation of other property. By this system, the property (except that local in character) including right of way, rolling stock and *franchises,* was assessed as a unit, and apportioned among the several municipalities, according to the length of the road within their limits, which levied their taxes thereon; this was claimed to violate the provision of the state constitution requiring uniformity of taxation, and the fourteenth amendment to the Federal constitution. The statute and classification made by it were held valid, the court saying:

> "There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitation as to them is that of uniformity as to the class upon which the law shall operate; that is, innkeepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule.

> But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best." (92 U. S. 611, 612.)

In speaking of the alleged violation of the Federal constitution, it was said:

> "The validity of the statute is not seriously questioned here on the ground of any conflict with the Constitution of the United States. If any such claim be set up, it is sufficient to say it is without foundation." (92 U. S. 617, 618.)

This question was next presented to this court in the *Kentucky Railroad Tax Cases* (115 U. S. 336, 337). There, the statute of Kentucky provided a separate system, different in material respects from the system for the assessment and taxation of property of corporations generally, for the assessment and taxation of the property of railroad companies by a state board, upon which assessment the same rate of tax for state purposes was imposed as that imposed upon other real estate in the state; one of the differences between this system and that applied to corporations generally was that, in case of other corporations the statement in their reports of the value of their property was conclusive upon the auditor, while in cases of railroad corporations, the values given by the corporations were subject to review and correction. In addition, the property of the railroad company was apportioned among the several counties and other municipalities through which its line of road extended, and the same rate of taxation imposed thereon for local purposes as was imposed upon real estate therein. This system was objected to as unconstitutional, as denying equal protection of the law, in that one

system was provided for railroads and another for other real estate. The statute and classification made by it were held valid, the court saying:

"The discrimination against railroad companies and their property, which is the subject of complaint as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky, on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining its value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury, as a tax, upon each one hundred dollars of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers.

But there is nothing in the Constitution of Kentucky that requires taxes to be levied by a uniform method, upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. *There is no objection, therefore, to the*

> *discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose.*" (115 U. S. 336, 337.)
>
> "We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law. That being so, the provision securing the equal protection of the laws does not require, in any case, an appeal, although it may be allowed in respect to other persons, differently situated." (338.)

In *Columbus Southern Ry. Co. v. Wright* (152 U. S. 470), a statute of Georgia, similar to those considered in the two cases last referred to, was before the court and held not to violate the fourteenth amendment, by providing for the assessment and taxation of railroad property by a rule different from that applied to property of corporations and individuals generally, the court there said of the classification mode:

> "This is hardly an open question. Various modes of taxing railroad property are adopted by the different states. In some, railroad companies are taxed upon their property as a unit. In others, the road and property in each county are separately assessed, and in still other states, the whole road is assessed, and then the assessment apportioned among the several counties and towns. These and all similar modes of taxation are subject to the legislative discretion of the respective states and do not ordinarily present any Federal question whatever." (151 U. S. 478.)

In *Pittsburgh, C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 421), a statute of Indiana, similar in effect, was held constitutional and valid, and of it the court said:

> "Its constitutionality has been practically settled by decisions of this court." (154 U. S. 425.)

In *Florida Central, etc. R. R. Co. v. Reynolds* (183 U. S. 480), a statute of Florida selected, for the purpose of reassessment, the property of railroad companies which had escaped taxation, without at the same time providing for the collection of unpaid taxes on other property; this was objected to as discriminatory, in violation of the fourteenth amendment. The court, after reviewing at length the cases construing and determining the nature of the application of the fourteenth amendment, as applied to matters of taxation, held the act valid, saying:

> "If the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of state policy, to be determined by the State, and the Federal government is not charged with the duty of supervising its action." (183 U. S. 480.)

In *Charlotte, etc. R. R. So. v. Gibbes* (142 U. S. 386), an act requiring railroads alone to pay the salaries of special tax commissioners by a tax on their gross income, was held not to be a denial of the equal protection of the laws.

In *Northern Pacific R. R. Co. v. Barnes* (2 N. D. 310), the taxation of railroads by percentage on their gross earnings, when other property was assessed upon actual cash value, was held not a denial of the equal protection of the laws.

In *McHenry v. Alford* (168 U. S. 651, 655, 673), a specific tax on gross earnings in full of all taxes on the land and other property of railroads, was held not to deprive other owners of similar lands, taxed upon their value, of equal protection of the laws.

In *Missouri River, etc. R. R. Co. v. Morris* (7 Kan. 210), an assessment of the entire line of a railroad as a whole and an apportionment to counties, townships, etc. by officers other than the regular assessors, was held not unconstitutional.

In *State Board of Assessors v. Central R. R. Co.* (48 N. J. L. 146, 278, 280, 290, 300, 313), it was held that railroad property may be made subject to separate rules of taxation through a state board of assessors without contravening the fourteenth amendment.

In *Central Iowa R. R. Co. v. Board of Supervisors* (67 Iowa 199), a provision for an annual specific tax on railroads instead of a regular biennial ad valorem tax as imposed upon all other property, was held not to deny equal protection.

In *City of Dubuque v. C. D. & M. R. R. Co.* (47 Iowa 200), a system of railroad taxation, incidentally discriminating against towns where shops, depots, etc. are located, was held not in conflict with constitutional provision that all corporate property "shall be subject to taxation the same as that of individuals."

In *Owensboro & N. Ry. Co. v. Davies Co.* (3 S. W. (Ky.) 164), it was held that where railroad property, though called "real estate," is valued and assessed differently from farms, city lots or other corporate property, the equal protection of the laws is not denied.

In *Ames v. People* (56 Pac. 656, 26 Col. 83), separate classification of railroad property for taxation purposes by assessing same as a unit and apportioning to counties, etc., according to miles of track therein, was held not in conflict with the constitutional provisions.

In *Yazoo & M. V. R. Co. v. Adams* (26 So. 335; 76 Miss. 545), appointment of special railroad commissioner to collect back taxes, and with no authority to assess other property, and a failure to provide for the usual appeal, was held not a denial of the equal protection of the laws.

In *Louisville & N. R. Co. v. City of L.* (29 S. W. (Ky.) 865), a discount of 3% for payment of taxes before specified time, applicable to citizens, not railroad, was held neither discriminatory nor unconstitutional.

In *St. Louis, etc. Ry. Co. v. Worthen,* (52 Ark. 529) the taxation of railroads by special commission, and providing for an annual assessment of "railway tracks" when other real estate is assessed biennially, and the denying of the usual appeal from such assessment, was held not a withholding of the equal protection of the law.

In *Chamberlain v. Walter* (60 Fed. 788), the annual valuation of railroad property for taxation purposes, where the constitution directs an assessment upon all other property only once in every fifth year, was held not a denial of equal protection.

A. *The right of the state to separately classify railroad property for purposes of taxation appears so conclusively settled as a general proposition, by the cases referred to, that it seems unnecessary to point out details distinguishing this from other property. We will, however, mention a few of the many special features.*

(1.) Railroad corporations possess franchises of a character peculiar to themselves and different from those possessed by other corporations. These are granted, or permitted to exist, by the state, and their enjoyment is of itself a sufficient difference upon which to base classification for taxation purposes. A number of these peculiar franchises are:

(*a*) The right of eminent domain is exercised generally in acquiring property for use in their business. This right is of one of the state's sovereign powers, and its exercise is of essential advantage to the corporation. When the state confers this privilege on a corporation or class of corporations, it

can subjoin to its enjoyment such limitations as it chooses, and among those limitations would properly be a special and separate system of taxation of the corporations possessing the privilege.

(*b*) This class of corporations are by Constitution permitted to have, and by statute given, perpetual existence. This admits of perpetual succession and an accumulation of intangible value not possible to corporations having a temporary existence.

(*c*) This class of corporations is given the use of a large amount of public property, e. g., they are, in addition to the right to take the property of private individuals, permitted to make use of any street, highway or alley which in the construction of their line they find occasion to cross or use. (*C. L.* 1897, § 6234.)

(*d*) The right of succession to the franchises and privileges of existing railroad corporations is permitted to purchasing corporations. (§ 6224, *C. L.* 1897.) This increases the franchise value and permits the corporation to secure its creditors to advantage.

(*e*) They are given the power to *enforce* connection with other similar companies.

(*f*) The statute expressly recognizes the sale value of the franchises and provides for their transfer. (*C. L.* 1897, §§ 6328, 6331, 6333, 6339, 6341.)

(2.) The railroad corporation possesses in large degree intangible value different from that attaching to property owned by individuals and different from that possessed by other corporations in that it is affected by the difference in the character of the franchises conferred upon the respective corporations. This intangible value, of course, is due to present

earning capacity, as well as the possibility for future earnings evidenced and secured by franchises conferred upon and permitted to exist by the state, and is different from that possessed by other corporations in important particulars.

(*a*) It exists in railroad companies in a more permanent character than in other corporations, due to the reasons, among others,—that it is not so readily diffused by competitive forces as the railroad traffic is not exposed to the competition evidenced in other business, and that corporations of this character are permitted perpetual existence. (*Record* 497.)

(*b*) The business of railroad corporations is in a sense monopolistic; between local points upon its line it has an absolute monopoly. (*Record* 497.)

(*c*) Railways are peculiarly benefited by the growth of territory. In the absence of commercial or competitive forces which tend in the great majority of businesses to diffuse the advantage of increase in population or wealth, railways are able to advantage themselves as the direct result of the growth of the community. (*Record* 497.)

(*d*) In railway business, economies are made possible by increased density of traffic. The fundamental law of transportation making railroads different from other classes of business, is that increased density of traffic results in increased rate of profit. (*Record* 497.)

(3.) The railroad corporation is engaged in rendering a service to the public in which the state itself might engage, (so far as the limitations of the fourteenth amendment are concerned). If the state itself engaged in this service it might attach such limitations as it chose, and if it organizes quasi-public corporations and permits them to take its place

in doing this business, the corporations should at least be subject to a peculiar control by the state different from that which the state exercises over corporations engaged in private businesses, and this right would extend to the imposition of a peculiar system of taxation. In other words, the rule broadly stated, might be that in permitting the quasi-public corporation to carry on its business, the state may make any regulation which it might make if it carried on the business itself, except that vested property rights are not to be infringed.

Upon this question the language of Mr. Justice Brewer, in *Cotting v. Goddard* (183 U. S. 93, 94), in speaking of the right of the state to control and regulate rates of public service corporations, is of interest and illustrates the difference between corporations of this character and private corporations. He says:

> "Now, in the light of these decisions and facts, it is insisted that the same rule as to the limit of judicial interference must apply in cases in which a public service is distinctly intended and rendered, and in those in which, without any intent of public service, the owners have placed their property in such a position that the public has an interest in its use. Obviously there is a difference in the conditions of these cases. In the one, the owner has intentionally devoted his property to the discharge of a public service. In the other, he has placed his property in such a position that, willingly or unwillingly, the public has acquired an interest in its use. In the one he deliberately undertakes to do that which is a proper work for the state. In the other, in pursuit of merely private gain, he has placed his property in such a position that the public has become interested in its use. In the one, it may be said that he voluntarily accepts all the conditions of public service which attach to like service per-

formed by the state itself. In the other, that he submits to only those necessary interferences and regulations which the public interests require. In the one, he expresses his willingness to do the work of the state, aware that the state in discharge of its public duties is not guided solely by a question of profit. It may rightfully determine that the particular service is of such importance to the public that it may be conducted at a pecuniary loss, having in view a larger general interest. At any rate, it does not perform its services with the single idea of profit. Its thought is the general public welfare. If in such a case an individual is willing to undertake the work of the state, may it not be urged that he in a measure subjects himself to the same rules of action, and that if the body which expresses the judgment of the state, believes that the particular services should be rendered without profit, he is not at liberty to complain? While we have said again and again that one volunteering to do such services cannot be compelled to expose his property to confiscation, that he cannot be compelled to submit its use to such rates as do not pay the expenses of the work and therefore create a constantly increasing debt which ultimately works its appropriation, still is there not force in the suggestion that as the state may do the work without profit, if he voluntarily undertakes to act for the state, he must submit to a like determination as to the paramount interests of the public?

Again, wherever a purely public use is contemplated, the state may and generally does, bestow upon the party intending such use, some of its governmental powers. It grants the right of eminent domain by which property can be taken, and taken, not at the price fixed by the owner, but at the market value. It thus enables

him to exercise the powers of the state, and exercising those powers and doing the work of the state, is it wholly unfair to rule that he must submit to the same conditions which the state may place upon its own exercise of the same powers and the doing of the same work?" (183 U. S. 93, 94.)

(4.) Unlike the property of individuals and other corporations, which is situated in a single assessment district, or if in more than a single assessment district, in detached parcels not depending upon each other for the success of the general business or upon the amount of profit, that of the railroad company is made up of a continuous, connected and inseparable line of property extending into numerous municipalities of the state and possibly into several states. Each portion of the system contributes to the success and profit of the whole, one portion being dependent for its value and earning power upon the remainder. The value existing in excess of the cost of reproduction of the physical property can only be reached and determined by taking a corporation and its property as a whole.

Adams Express Co. v. Ohio, 166 U. S. 219;

S. V. R. R. Co. v. Supervisors, 78 Virginia 279.

To attempt to assess so much of the property separately in each of the municipalities as lies within such municipality, would destroy for purposes of taxation and prevent the taxation of, anything but the physical property. This necessities a system like the present by which the property of the company can be assessed as a unit.

See Briefs in California v. Pacific R. R. Co. 127 U. S. 1;
City of Dubuque v. C. D. & M. Ry. Co., 47 Ia. 202;
State Board of Assessors v. Central Railroad Company, 48 N. J. L. 322.

The rule is stated in *Rorer on Railroads* (p. 1499, § 14), as follows:

"A railroad is an entirety and cannot be cut up and taxed and sold for taxes in parcels. Such a course would not only sacrifice the structure for a nominal price, as it could not in parcels be of its real value to a purchaser, but would result in a destruction of the franchise and would destroy its availability to the public."

(5.) The railroad corporation as a quasi-public service institution, has received public aid in a large degree. Of this I think the courts will take judicial notice and this fact alone would permit separate classification.

(6.) Perpetual existence is given to railroad corporations by the Michigan Constitution, but is denied to all other corporations, except canal and plan road companies. (*Constitution*, § 10, *Art. XV.*)

(7.) These corporations have undertaken to permit legislation with regard to them. In the law of their organization, as well as in the Constitution, the right to alter, amend or repeal is reserved. This is an essential item and one which justifies their separate classification but does not justify a direct attack on vested property rights. Acts of incorporation have in numerous cases been held contracts, and it has been held that corporations organizing under a statute, take it with the burdens and restrictions therein set forth. They cannot claim the advantages and shirk the disadvantages, but in becoming corporations under a statute reserving the right to alter, amend or repeal, they agree with the state that it may make any and all reasonable regulations of their property or business, or apply to them different and peculiar rules, whether of taxation or otherwise, so long as the regulations applied do not materially impair the purposes of organization or take away property rights which have

been acquired. The state can take away the very existence of the corporation, and if it can do this, it certainly can subject it to a different system of taxation, which does not burden it more oppressively than the other property of the state is burdened, and, which has for is real purpose compelling it to bear its just proportion of the expenses of the state's government. This idea is sustained by *St. Louis I. M. & S. Ry. Co. v. Paul* (173 U. S. 408, 409), and will be found argued at length in another portion of this brief. (*Post page* 226.)

(8.) The idea of taxing railroad property by a rule distinct from that by which other property is taxed is not new in Michigan. In fact, since the creation of the state, and previous to the adoption of the fourteenth amendment, railroad and other public service corporations have, in this state, been taxed according to a different rule and method than that applied to the property of individuals and corporations generally; these corporations have always been taxed at a certain rate per cent upon their gross earnings, or some other form of specific taxation, which has been in lieu of other taxes on the property engaged in the railroad business.

General Laws:

C. L. 1857, § 952; C. L. 1871, § 1143;
Howell's § 1218; C. L. 1897, § 3992;
1855, act 82, § 45, p. 173;
1869, act 142, § 45, p. 262;
1873, act 198, § 1, art. 2, p. 530;
1875, act 195, § 37, p. 354;

Special Acts:

1846, act 42, § 33, p. 61;
1846, act 104, § 20, p. 151;
1846, act 137, § 22, p. 234;
1846, act 154, § 21, p. 282;
1846, act 158, § 2, p. 289;

1855, act 138, § 3, p. 302;
1855, act 140, § 9, p. 305.

The specific system of taxation, in selecting for its application the property of railroad and similar corporations, has been uniformly sustained.

The Delaware Railroad Tax, 18 Wall. 206, 231;
McHenry v. Alford, 168 U. S. 651;
Pacific R. R. Co. v. Barnes, 2 N. D. 310, 395.

If railroad and other similar corporations are a separate class for the imposition of a tax at a specified rate upon their gross earnings, they are equally a class by themselves for the purpose of taxation on the property engaged in carrying on their business. The limitations which would prevent classification for the one would equally prevent it for the other purpose.

That the state has always pursued a system for the taxation of railroad and other public service corporations according to a separate rule has great force in determining the propriety of the classification, as it was not intended by the 14th amendment to limit the authority of the states in regard to taxation, and such requirements as are "within reasonable limits and *general usage* are within the discretion of the legislature."

American Sugar Refining Co. v. Louisiana, 179 U. S. 94;
Bell's Gap R. R. Co. v.Pennsylvania, 134 U. S. 232.
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 294;

(9.) The rates of railroad companies are regulated by the state, the constitution early making express provision for it. (*Art. XIXA*, § 1.)

This is one of the few if not the only case of the regulation of rates by the state and the fact that the state has regulated those rates (and that its right has been sustained generally),

gives it the authority to impose upon these corporations a separate system of taxation. The fact of rate regulation was one of the reasons for partial exemption from taxation previous to 1901. A direct and necessary relation exists between the rates for performing the service and the tax, as the income permitted bears a direct relation to the amount of taxation, and the fact that the state is permitted to separately classify these corporations for rate regulation carries with it authority to also separately classify for purposes of distinct systems of taxation.

B. *In addition to the differences between the railroad corporation and other corporations pointed out above, there are certain things surrounding the classification made which completely justifies the legislature in making that classification.*

(1.) In the bill of complaint there is and in the lower court, there was no claim whatever that anything, further than the property of the railroad companies engaged in their railroad business, was included in the assessment, or that the railroad companies possessed any personal property further than that engaged in such business.

(2.) The aim of the present statute is not to make a classification solely upon the basis of a difference in the character of the corporations taxed by the different systems; the classification is not predicated on the fact that the corporations taxed by act 173 are of a different character than those corporations taxed locally, but predicated principally on the fact that the property of the corporations subjected to taxation is of a different character, in a different situation and subject to different circumstances, conditions and surroundings than is property belonging to persons and corpo-

rations generally, and the aim of the statute in the case of railroad corporations is to tax that property used in carrying on the *railroad* business.

Indicative of this is the description which the state board of assessors is required to enter upon its roll in assessing railway property, which is:

> "Real estate, rolling stock, right-of-way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a state board of assessors." (§ 9, act 173, 1901.)

Section 5 of the act provides:

> "The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, road-bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property, and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property."

This construed by the rule that general words following special words are to be confined to things *ejusdem generis* is limited to *railroad* property.

> American Transportation Company v. Moore, 5 Mich. 368; 24 How. 1;
> McDade v. People, 29 Mich. 50;
> Brooks v. Cook, 44 Mich. 617.

The system of taxation under act 173 was intended to include only the property of railroad companies previously subjected to specific taxation (see record, pp. 357 to 372 inclusive), not that which had paid its fair share of the state

taxes through local assessments and the previous specific system had embraced only the property engaged in railroad business. (*C. L.* 1897, § 6277, 3830, *clause* 8th, § 11, *act* 235 of 1903.)

In addition, act 173 expressly excludes from its operation the real property of the railroads not presently used by them in carrying on their railroad business, indicating clearly the legislative intent. (§ 5, act 173, 1901.) It is thus seen that the statute contemplates a classification of the property by reason of the different use to which it is put, situation in which it is found and conditions which surround it, from the property of corporations and individuals generally. That this is proper basis for classification is beyond question.

In *Northern Pacific R. R. Co. v. Walker*, (47 Fed. 685, 686), it was said:

> "The legislature, in the exercise of its powers to select the subjects of taxation and classify property for taxation, 'may place railroads in a class by themselves, and tax them and their property different from other persons; the only limitation being that all railroads in the same class must be taxed alike.' But, as before stated, conceding that under the organic act railroads may be classed by themselves for the purposes of taxation, and taxed by a method applicable to them alone, still that classification and method of taxation must be restricted to what is railroad property. It cannot be extended to lands which have no relation to the railroad, or its use or operation. The franchises of railroad companies, and their earnings, and railroad property as before defined, may well be classed by themselves for purposes of taxation, and taxed by a different method or rule from that applied to other property. This may be done because it is unlike other property. It is the difference in the character, condition and use of this kind of prop-

erty from other property that justifies the difference in classification and the mode of taxation. Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to its ownership."

In the last mentioned case, it was held that lands owned by a railroad corporation, not used in the operation of its road could not be treated as railroad property, and were not differently situated than lands owned by private individuals. In this respect, the decision was overruled by *McHenry v. Alford* (168 U. S. 668, 669), which held that an act providing for the specific taxation of property of railroad companies, (including in the property thus taxed lands separate from, and not used directly in carrying on the railroad business, the same being mortgaged to secure the payment of bonds, issued to raise money used in the construction of the road,) was valid and constitutional, and that the classification of those lands with the other property of the railroad company to be taxed by a system, and at a rate, different from that to which the lands of individuals were subject, was valid. This decision was placed upon the basis that the security of the lands made it possible to build the road, and as such, they contributed to the gross earnings upon which the tax was paid, and constituted a part of the railroad property as fully as the right of way, road bed, tracks or engines, the court saying:

"There is no difference in principle between the two classes of property, so far as this question is concerned. Then too, the road of the company runs through the whole state, hundreds of miles; it owns thousands upon thousands of acres therein, granted it for the purposes stated, and these lands it has accordingly pledged to redeem its bonds issued as mentioned. Its building was a work of national importance, and it was built for use by the government, as well as for other purposes. Surely

all these various facts justify a classification of such an entity for taxation by a different method and upon different lines than the individual, and the lands thus situated and owned are in a materially different condition from lands absolutely owned by an individual."

Stearns v. Minnesota, 179 U. S. 223.

There has been no claim or showing on the part of the complainants, either in their pleadings or proofs, that act 173 intended to include or that there was actually included by the state board of assessors in making their assessments, anything but railroad property, meaning property engaged in carrying on the railroad business; nor is there any proof to indicate that it owns any property not engaged in its railroad business; this being true, the court will not assume the inclusion of any such property by the state board of assessors, the presumption being to the contrary. These corporations are organized for a single and distinct purpose—that of operating railroads, they are not investment companies; it is doubtful if, without express statutory authority, they could, in this state, own property which would not be subject to classification as railroad property, and if they do own any such property, it was the intent of section 5 of act 173 to exclude it from the operation of the statute. If any property other than railroad property was included or is owned by them, it is their business to disclose it. (Adams Express Co. v. Ohio, 166 U. S. 223.)

The remark is made in numerous cases previously referred to, and the principle is settled that the state may "impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products, may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. (134 U. S. 232.) If it is permissi-

ble to impose different rates upon, and tax by different systems, persons engaged in different trades or professions, the same principle will permit the taxation, at different specified rates and according to different systems, of property engaged in different kinds of business.

The rule is that the states are allowed a large discretion in classification for the purposes of taxation; if a classification rests upon some difference in the character of the property which bears any proper and just relation to the purpose for which the classification is made, the courts will not inquire into the good faith of the legislature or whether any further reason exists for the classification. This being the rule, it must necessarily follow, as the cases have amply sustained, that there is a sufficient difference between the situation of property engaged in railroad business and that engaged in other business and owned by individuals and other corporations, to permit the application of different rules of assessment and taxation.

(3.) In making railroad property a separate class, the constitution and statute do not make it a separate class for the imposition of the same tax as is imposed on general property. The railroad property is made to bear certain state expenses, the tax being particularly a state tax. (Act 173, 1901, § 16.) (120 Mich. 102.) The other property of the state is made to bear state and local taxes different in character than those imposed upon the railroad corporation. This of itself is a complete justification of separate systems of valuation and review and has been so held by this court.

In *Travelers' Life Ins. Co. v. Connecticut* (185 U. S. 364), a different tax upon stock in the same corporation owned by residents, from that owned by non-residents, was upheld for the reason that the tax upon one class was for state, and the other for municipal purposes. The court pointed out that the

non-resident stock by reason of its character, was very properly selected for the purpose of bearing the state tax. In this case, by reason of the character of the railroad property and its location in a number of municipalities, its business in each contributing to its value as a whole, the railroad corporation was very properly selected for the purposes of the state tax.

C. Numerous statutes, limited in their operation to railroad *corporations*, have been sustained,—

Minneapolis, etc. Ry. Co. v. Herrick, 127 U. S. 210;
Tullis v. Lake Erie & Western R. R. Co., 175 U. S. 348;
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512;
Louisville & N. Ry. Co. v. Tenn. Ry. Com., 19 Fed. 679.

See, also, Commonwealth v. Sharon Coal Co., 164 Penn. St. 284, (304);
New York v. Barker, 179 U. S. 279.

In *Minneapolis, etc. Ry. Co. v. Herrick*, and *Tullis v. Lake Erie & Western R. R. Co.*, statutes providing for liability for injuries resulting from negligence or incompetence of fellow servants, was limited to railroad corporations.

In *Missouri Pacific Ry. Co. v. Humes*, the statute provided for the erection of fences and for failure imposed double damages for stock killed, and was limited to corporations.

D. Railway companies have always been regarded as special subjects of classification for purposes other than that of taxation, notwithstanding the more stringent rule of classification for such other purposes.

Minneapolis, etc. Ry. v. Beckwith, 129 U. S. 26;
Missouri Pacific Ry. v. Mackey, 127 U. S. 205;

Minneapolis, etc. Ry. v. Herrick, 127 U. S. 210;
Atchison T. & S. F. Ry. v. Matthews, 174 U. S. 96;
St. Louis, etc. Ry. v. Paul, 173 U. S. 404;
Chicago, B. & Q. Ry. v. Chicago, 166 U. S. 258;
McCandless v. Richmond & D. R., 18 L. R. A. 440;
Schoolcraft, Admr. v. Louisville N. R. Co., 92 Ky. 233;
Georgia R. R. & Banking Co. v. Miller, 90 Ga., 571;
Minneapolis, etc. Ry. Co. v. Emmons, 149 U. S. 364;
New York & N. E. R. R. Co. v. Bristol, 151 U. S. 556;
Clark v. Russell, 97 Fed. 900,—C. Ct. A.;
Gulf, etc. R. R. Co. v. Ellis, 165 U. S. 150;
Missouri, Kansas & Texas Ry. v. May, 194 U. S. 269;
Central Pacific Ry. v. Evans, 111 Fed. 76.

In *Missouri Pacific R. R. v. Mackey* (127 U. S. 205), railroads were separately classified for purposes of a statute, imposing liability for injury resulting from negligence or incompetency of fellow servants; and the statute in

Minneapolis & etc., Ry. v. Beckwith (129 U. S. 26), was of the same character.

In *Atchison T. & S. F. Ry. v. Matthews* (174 U. S. 96), the statute permitted recovery of attorney fee against railroads upon successful action for damages for fire resulting from operation of road, while such attorney fee was not allowed as against plaintiffs or other corporations.

In *St. Louis, etc. Ry. Co. v. Paul* (173 U. S. 404), the statute provided penalty for failure of railroad corporations to pay employees upon termination of employment by continuing wages at same rate, and applied only to railroad companies.

In *Chicago, B. & Q. Ry. Co. v. Chicago* (166 U. S. 258), the railroad company was awarded nominal compensation for the laying out of a street across its road, while individual property owners were given the value of the land which was taken.

In *Georgia R. R. & Banking Co. v. Miller* (90 Ga. 571), it was held that a rule of liability imposed upon railroad com-

panies for injury to employees by negligence or misconduct of fellow servants not applied to other classes of employers was not unconstitutional.

In *Missouri, Kansas & Texas Ry. v. May* (194 U. S. 269), of a law subjecting railroad companies to a penalty for allowing certain grasses and noxious weeds to go to seed, but not applying to other property owners—it was said:

> "When a state legislature has declared that in its opinion a certain policy is necessary, its action should not be disturbed by the courts under the fourteenth amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force, its extension to others whom it leaves untouched."

E. The following propositions must be regarded as conclusively settled by the Federal cases:

(1.) Different rates, and rules of valuation, assessment and review can properly be applied to the separate classes and the property of railroad and other public service corporations as one of the separate classes.

(2.) Other and different rules of classification are proper and can be applied by the legislature of a state in enacting a taxing system than can be used in classification for other purposes.

(3.) A classification of property based on the nature of use is legitimate and proper.

(4.) Railroad corporations and their property may be made a special class for purposes of taxation.

THIRD.

Should property, of specific companies, or of specific character, have been classed with that of complainant to render the statute constitutional.

A. *Sleeping car companies.* With regard to these companies the bill alleges, and the answer (*Record* 42, 12) denies,

> "that there were in the state of Michigan at the time of the passage of said act number 173, and ever since have been sleeping cars owned and used by railroad corporations in the course of their railroad business and consequently within the terms of said act number 173, while during all said time there have been sleeping cars owned and used in the state of Michigan by corporations and associations other than railroad corporations in the same way and for the same purposes and in the same sort of business as sleeping cars owned and used by railroad corporations as aforesaid, but the property of such sleeping car companies other than railroad corporations is not within the terms of said act."

Testimony (*Record* 174, 181, 252) was taken to indicate the character of sleeping car as compared with railroad companies and to indicate the extent to which sleeping cars are owned and operated by railroad companies. From this testimony the character of the sleeping car business carried on by the Pullman company, appears to be that that company owns sleeping, chair and dining cars which it furnishes by contract to the railroad company, which usually pays a rental charge. The cars are placed in the railroad company's trains, which furnishes the motive power, takes care of the outside of the car and running gear and collects the fare for transportation. The Pullman company furnishes the car with a porter and charges an occupancy fare, in addition to the fare charged by the railroad company.

The following elements are possessed by and surround railroad, but not sleeping car, companies:

(*a*) They own and necessarily use real estate, right-of-way, road-bed, stations and many similar things in operation.

(*b*) They are given the right of eminent domain and other rights and privileges not given to sleeping car companies.

(*c*) They do a miscellaneous business and receive revenue from freight and other sources—the sleeping car company's business and earnings are limited.

(*d*) Their fares are regulated by the state.

(*e*) They own and use locomotives and furnish motive power and superintendence of trains.

(*f*) They make contracts, and charge fare, for the carriage of passengers—the sleeping car company only charges an occupancy fare.

(*g*) They are subject to the Michigan railroad law and its police regulations.

(*h*) They are common carriers, which the sleeping car company is not.

Pullman Palace Car Co. v. Hatch, (70 S. W. 771), 30 Tex. Civ. App. 303.

Scaling v. Pullman Palace Car Co., 24 Mo. App. 32;

Blum v. Southern Palace Car Co., Fed. Cases, 1574;

Pullman Palace Car Co. v. Gaylord, 9 Ky. Law Rep. 58.

If the railroad company operates sleeping cars, it is merely as an incident of its principal business of a common carrier, while the business as performed by the Pullman company is its principal business.

The business of the Pullman company is simply the renting of cars at special contract rates and collecting an occupancy charge. It has nothing to do with the operation and is dependent for a continuation of its business in its present form on the existence of the railroad company; while the railroad company is not in like manner dependent on the sleeping car company for a continuance of its business.

The Witness Patriarche states that the business done by railway companies is similar to that done by the Pullman company. This may be true, so far as that limited part of the railway's business is concerned, but it does not mean that the railway company is in the sleeping car business, or the sleeping car company in the railway business.

The business of these sleeping car companies is of such a nature as to justify the legislature in classifying them with railroad companies, with property generally, or by themselves.

In *Western Union Telegraph Company v. Indiana* (165 U. S. 304), it was held that the Indiana statute classifying telegraph, telephone, palace-car, sleeping car, express and fast freight companies together for the purposes of taxation by a different rule than applied to railroad and other companies, was not unconstitutional.

The question, however, is controlled by *Pacific Express Co. v. Seibert* (142 U. S. 354). There, the property and business of the express companies before the court was in a position identical with regard to its relation to the property and business of the railroad companies as is the property of the sleeping car companies under the testimony in this case. The railroad companies carried an express business but those express companies which operated by contract with the railroad companies and which did not own their own means of transportation were not taxed as the railroad companies were taxed, and here the sleeping cars which are not operated by

railroad companies are not taxed according to the same rule. The court distinguishes the classes made by pointing out that the railroad company doing express business employed a large amount of property which was taxed while those express companies doing business under contract with railroad and steamboat companies were not taxed upon the same amount of property engaged in the express business. In comparing the railroad with the express company, it was said:

> "They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection, therefore, to the discrimination made as between express companies defined by this act and other companies or persons incidentally doing a similar business by different means and methods in the manner in which they are taxed. Their different nature and character and means of doing business justify the discrimination in this respect which the legislature has seen fit to impose." (142 U. S. 354.)

Pacific Express Company v. Seibert, 44 Fed. 310, 316;

Pullman Southern Car Co. v. Gaines, 3 Tenn. Chancery, 587;

Robbins v. Taxing District, 81 Tenn. 309;

Gibson County v. Pullman Southern Car Co., 42 Fed. 574;

Contra:

Car Company v. Texas, 64 Texas 274.

As was said in the last mentioned case (*Pacific Express Company v. Seibert*), a system

> "which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity

> and equality in taxation and of a just adaptation of the property to its burdens,"

but to sustain the contention of the complainant in this regard would render it imperative to tax all property by the same system and would lead to the result that their lands must be taxed as other lands are taxed, their personal property taxed as other personal property is taxed, their stations as other buildings, etc. The very statement of the proposition carries with it the answer.

The business of an institution or its property is to be classified for taxation with reference to its entire business rather than by a comparison with some business or property which is engaged, in part in, or, in part of, the same business.

> American Sugar Refining Co. v. Louisiana, 179 U. S. 95;
>
> Cook v. Marshall County, 196 U. S. 274, 275.

The record indicates that the operation of sleeping cars by railroad companies is very limited; that they are operated by but a very few companies and are simply a part of, and incident to, their railroad business. Though the business of the Pullman company were identical with this business, the discrimination would be so slight that it should be overlooked.

> Mercantile Bank v. New York, 121 U. S. 161, 162;
>
> Florida, etc. R. R. v. Reynolds, 183 U. S. 480.

In the case last above, it was said:

> "We must assume that the legislature acts according to its best judgment for the best interests of the state. A wrong can not be imputed to it. It may have found that the railroad delinquent tax was large and the delinquent tax on other property was small and not worth the trouble of special provision therefor."

The Michigan legislature of 1905 (by act 282) amended act 173 so as to include within its terms sleeping car companies so that this question is now immaterial to the statute's validity.

B. *Interurban street railway companies.* Complainant's contention is that street railway companies have interurban railways running in and between different places, carrying mail, express, freight and passengers, and are doing business and own property of essentially the same sort and character as that of the corporations included in act 173 and that discrimination results from such corporations not being classed with complainant.

The differences of situation between the properties of these companies and complainant appear from the testimony of Patriarche and Walker. (*Record* 170, 444.) Some of the principal points of difference are as follows:

(*a*) The business of the interurban street railway is of recent origin, there being little interurban mileage in Michigan previous to 1902. (*Record* 178.) This is particularly so with regard to freight business.

(*b*) Rates of fares on interurban roads are uniformly less than on steam roads.

(*c*) The interurban franchise is acquired from the municipalities in which operated; these municipalities by law are permitted to regulate by contract the rate of charge, running time and speed.

(*d*) The steam roads' rates are regulated by the statute, and

(*e*) It has and exercises the right of eminent domain.

(f) Steam roads are organized for perpetual existence, street railways for thirty years. (*Constitution,* § 10 *Art. XV.*)

(*g*) Steam roads interchange passengers among each other, but not so with interurban roads.

(*h*) The interurban business is principally local, as against car interchange on steam roads.

(*i*) The length of haul is radically different, being invariably shorter on interurban roads.

(*j*) The interurban road carries practically no freight in car-load lots.

(*k*) The makeup of the train is different.

(*l*) The interurban road uses the streets, particularly in cities and villages.

(*m*) The steam road is an additional burden to the highway, the street railroad is not.

(*n*) The interurban road has little or no interstate traffic, operates no sleeping cars, maintains few, if any stations, has no right under statutes to force interchange connection or switches with steam road.

These are sufficient differences to justify separate classification of property engaged in this business from that engaged in railroad business proper. The interurban road may be in competition with the steam road and may carry passengers, or a limited amount of the same kind of freight, but the similarity in the business of the two institutions does not render imperative their classification together for purposes of taxation, if elements of difference exist between them. Almost any one of the items referred to constitutes in itself a sufficient difference to justify separate classification.

These roads have always been subjected to separate rules of taxation from railroad property, and have been classified with and assessed and taxed as is property throughout the state generally. The purpose of act 173 is to subject to ad valorem taxes those corporations theretofore paying specific taxes. The street railway corporations had not been paying specific taxes; no reason existed for their inclusion in the act, and there can be no claim that the burden is not equally distributed between the interurban and steam railroad companies; the one pays the rate of taxation in the municipality

in which its property is located, the other the average rate. That these institutions were, previous to 1902, taxed according to different systems, now justifies a different classification for taxation purposes.

> Railroad Company v. Harris, 99 Tenn. 706, 707;
> Kidd v. Alabama, 188 U. S. 732.

In *Erb v. Morasch* (177 U. S. 584), an ordinance limiting the rate of speed of railroads, excepted from its provisions a certain interurban street railroad operated at the time of its passage by steam power used in dummy engines and subsequently by electricity. This was held not an arbitrary classification, the court saying:

> "All that is necessary to uphold the ordinance is that there is a difference, * * * Given the fact of a difference, it is a part of the legislative power to determine what difference there shall be in the prescribed regulations." (587.)

> Savannah T. & I. Ry. Co. v. Mayor, 198 U. S. 392.

In *Kentucky Railroad Tax Cases* (115 U. S. 337), it was said that a classification which distinguished between street railway and railroad corporations was valid and based upon reasonable differences.

> See also, Jersey City v. B. Ry. Co., 65 N. J. L. 501;
> Camden & A. R. Co. v. Atlantic City, 58 N. J. L. 316—affirmed 41 Atl. 1116;
> Lookout Incline & L. E. R. R. v. King, 59 S. W. 805;
> Cedar Rapids & M. C. Ry. v. City of C. R., 106 Iowa 476.

Questions of whether, in the construction of particular statutes, street railroads are included within the term "railroads" are considered in many cases which indicate that it has never been considered essential to classify the two together, and that they are in fact different in character.

> Mass. Loan & Trust Co. v. Hamilton, 11 Am. & Eng. R. R. Cases (N. S.) 771, 88 Federal, 588;

Fidelity Loan & Trust Co. v. Douglas, 9 Am. & Eng. R. R. Cases (N. S.) 713, 716, 717; 104 Iowa, 536.

Cordray v. Savannah, etc. Ry., 30 Am. & Eng. R. R. Cases (N. S.) 286;

Savannah, etc. Ry Co. v. Williams, 30 Am. & Eng. R. R. Cases (N. S.) 279;

State v. Duluth Gas & Water Company, 76 Minn. 76;

Riley v. Galveston City Ry. Co., 13 Texas Civ. App. 247;

Louisville & P. R. R. Co. v. Louisville City Ry. Co., 2 Duv. (Ky.) 175;

Front St. Cable Co. v. Johnson, 47 Am. & Eng. R. R. Cases (N. S.) 287.

The ultimate result of the complainant's contention on this point is that steam and street railways must be taxed together and alike. The interurban in certain respects is similar not only to the steam but also to the street railroad and the considerations which might be pointed out as requiring its classi-classification with the steam railroad also require its classification with the street railway. It is not for the courts to determine, but it must be left with the legislature to say with which class the interurban shall be taxed.

C. *Railroads owned and operated by individuals, partnerships or unincorporated associations.*[1] No evidence has been introduced to indicate the character of the property owned, or business done, by these purported railroads, except in three instances,—The F. & F. Lumber Company road,[2] the Louis Sands Lumber Company road,[3] and the Cadillac & Northeastern or Cummer-Diggins road.[4]

Note—[1] The testimony on this question is found in Record pages 200, 224, 384, 399, 401, 417. [2] Permanent main line 12 miles, temporary, 10 miles. Record, 419. [3] Main line 25 miles. Record, 225. [4] Main line 10 miles, branches 15. Record, 386.

(1.) With regard to the three roads in reference to which testimony was introduced, the proof indicates that they are, what may be designated, "logging roads." The several owners are individuals or partnerships engaged principally in the business of lumbering, and incidentally and for the sole and only purpose of conveying their forest products from the forest to the mill, operate short railroads, which will be discontinued when the lumber in the locality is cut off; in instances they carry forest products for others, but only upon a special contract with each individual.

In each instance the roads are located in unsettled portions of the country, with one end in the woods and the other at the mill, and it would be impossible, taking into consideration the surrounding conditions and location, to carry on a general railroad business as it is carried on by complainant, or by railroad corporations generally, there being no such business to be carried. In each instance they have no running time schedule or fixed rates of fare or charge, and often months elapse without trains being run; each owns several locomotives and a number of logging flats, but no passenger cars and they carry no passengers, (the F. & F. road did establish a passenger tariff for the express purpose of preventing persons from riding on their trains) baggage, mails or express. The roads are built entirely upon private rights of way, purchased by the owners; they do not conform to the requirements of the general railroad laws, can not exercise the right of eminent domain, are not common carriers, and do not possess any of the privileges accorded to railroad companies. The entire value of the property of the three roads, placed at a very liberal figure, would be less than \$150,000; the entire business carried on by all of them for persons or corporations other than the owners would be limited to perhaps \$2,000 a year. (See Mercantile Bank v. New York, 121 U. S. 161, 162.)

The character of these institutions might be further detailed, but nothing further could be said which would indicate any similarity between their property and that of those railroads which are common carriers, exercising the privileges granted by the state, including that of eminent domain. Under the circumstances, we do not believe it can be successfully claimed that the corporations, taxed under act 173, are injured by not being classed with, and having this property taxed according to the system applied to them.

(2.) These institutions are engaged principally in carrying on their own private business, which is not a railroad business. This fact alone makes them a separate and distinct class for purposes of taxation.

Dayton v. Coal & Iron Co., 99 Tenn. 578, 581;
Billings v. Illinois, 188 U. S. 102.

Had the legislature desired, it might have said that all those railroads which carry on business principally for others should constitute one class, that those railroads which carry on business principally for themselves as an incident to the lumber business or a business of similar character should be made a separate class and taxed by a separate system; and this would be legitimate, though the railroad company which carried on business principally for itself, also, in part, carried on business for others, and could, as to that part of its business, be construed to be a common carrier, which is impossible here. The proposition, as applied to the existing facts, is too clear for argument.

(3.) The railroad not owned by a railroad company has always been subject to taxation locally, the same as property owned by citizens generally. The property of the complainant companies has always been taxed specifically. In altering the system so as to bring specific tax paying institutions

to an ad valorem system of assessment and taxation, it was not necessary to include a railroad which was previously taxed by an ad valorem rule. That these institutions were, previous to 1902, taxed according to different systems is sufficient to justify a different classification for taxation purposes.

Railroad Company v. Harris, 99 Tenn. 706, 707;

Kidd v. Alabama, 188 U. S. 732.

D. *In general applying to failure to include sleeping car companies, interurban street railways and unincorporated railroads.*

(1.) If it is necessary for the state to classify sleeping car, street and interurban railroads and logging roads with steam railroad companies for purposes of taxation, it is equally necessary that they be classified together for police regulations, regulations as to rates to be charged, etc. This indicates the fallacy of the proposition that they must be classified together for any purpose.

(2.) Assuming that interurban, street railway, sleeping car and express companies, and institutions operating logging roads, are all engaged in railroad business, this does not affect the right of classification, as classification may be had among railroad companies. They may be classified for purposes of taxation, upon the amount of their gross earnings,[2] upon the fact that they extend beyond the boundaries of certain municipalities;[3] and for the purpose of fixing the rates for the

NOTE. [2] Commissioner of Railroads v. Wabash R. R. Co., 123 Mich., 669;

[3] San Francisco & N. P. Ry. Co. v. Board of Equalization, 60 Cal. 12;

transportation of passengers and freight upon the amount of their gross earnings,[1] upon the length or amount of their mileage,[2] or upon the territory in which they exist,[3] and classification based upon corporate existence[4] and the reservation of the right to alter, amend or repeal corporate charters,[5] has been sustained.

(3.) Admitting for purposes of argument that the property of these special companies or institutions is of the same character as that of complainant's, still it has no ground of complaint. The complainant can only complain of the invalidity of the classification made if it has been injured.

Cummings v. National Bank, 101 U. S. 160;
Clark v. Kansas City, 176 U. S. 118;
Supervisors v. Stanley, 105 U. S. 305.

There has been no injury to complainant from including the property of sleeping car, and interurban street railway, companies, and unincorporated roads with the general property of the state, instead of with the corporations taxed under act 173, but the opposite is the case and a benefit results, the rate of taxation of the complainant being reduced in proportion as the property subject to general taxation is increased.

Under the system of taxation in force in Michigan, taxes upon the general property are usually voted by the legislature or municipalities in a lump sum, though there are some

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NOTE. [1] Chicago B. & Q. v. Iowa, 94 U. S. 155; Wellman v. Chicago & G. T. Ry. Co., 83 Mich. 592, 599;
[2] Dow v. Biedelman, 125 U. S. 680; 49 Ark., 335, 294,
[3] Wellman v. Chicago & G. T. Ry., 83 Mich., 592, 600;
[4] Tullis v. Lake Erie & Western Ry. Co., 175 U. S. 351;
[5] St. Louis & Iron Mountain Ry. Co. v. Paul, 173 U. S. 406.

exceptions to the rule. The property is assessed at its value without regard to the amount to be raised, and naturally as the amount of property increases the rate decreases, and as the rate on the general property decreases, the taxes of the corporations taxed under act 173 decrease as the amount of their taxes is not affected or influenced by the amount of property in the class formed by act 173 but rather by the amount taxed generally.

(4.) A further reason why the complainant has no cause for complaint is that it is incorporated under a statute reserving the right to alter, amend, or repeal. Previous to 1901, the special law for the taxation of railroad corporations, was a part of the act of incorporation which was in that year superseded by the separate act (173) imposing the system here in question.

Act 173 was a proper exercise of the reserved right. By the reservation of that right, the corporation is kept under control; the state may where the right is reserved repeal the act of incorporation, take away any rights dependent for their existence upon the continuance of the charter contract, and in fact do anything which does not impair vested property rights or by way of amendment materially alter the purpose of the incorporation. The legislation in question here does none of these things.

By incorporation under the statute, the railroad corporation acquiesced in its separate treatment and classification for taxation purposes, and the act of the legislature continues that arrangement.

The propriety of this is apparent when we consider, that the system of taxation taken as a whole has for its purpose the imposition of the same rate on each class as nearly as the same may be ascertained, and, that the result is that by the separate classification of these companies

and institutions, the railroad corporation is benefited and not prejudiced. As pointed out, the distinction between the classes is formal and not substantial; the classification: is, to subject that property which had previously escaped its fair share of the state's burdens to taxation equal to that borne by others; is for the purpose of permitting the application of a unit system of taxation where it is needed to secure proper assessments; is to fix a proper class for the purpose of a state tax, and to do this the reserved legislative power was properly exercised.

The question is ruled by *St. Louis & Iron Mountain Ry. Co. v. Paul* (173 U. S. 406), where the reserved power over corporations was held to permit the application to railroad corporations alone of requirements regarding the payment of employes which could not legally be applied to individuals operating railroads.

See Leep v. Railway Company, 58 Ark. 407.

(5.) The fourteenth amendment permits exemptions from taxation and the states have uniformly extended them to such persons and property as they deemed requisite without restraint by the Federal constitution. The state might have exempted from taxation the property of any or all of the specific companies mentioned, and had it done so the railroad corporations would have had no ground of complaint. In *Florida Central, etc. Railroad Company v. Reynolds* (183 U. S. 480), it was said:

> "In the light of these decisions, if the State of Florida had deemed it for the best interests of its people to encourage the building of railroads by exempting their property from taxation, such exemption could not have been adjudged in conflict with the Fourteenth Amendment, even though thereby the burden of taxation upon other property in the state was largely increased. In-

deed, that was the policy of the state prior to the Constitution of 1868, and, conversely, if the state had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action."

If the state could grant a total exemption, it might grant a partial one or so far as the right of other corporations to complain was concerned, might tax by an entirely different system.

Missouri v. Dockery, 191 U. S. 170, 171.

The principle which in many cases has permitted exemptions, must apply here as the property of the corporations taxed under act 173, and that of the specific companies enumerated is as widely different each from the other as was that taxed or exempted in the following cases:

Billings v. Illinois, 188 U. S. 97;

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283;

American Sugar Refining Co. v. Louisiana, 179 U. S. 89;

Cook v. Marshall County, 196 U. S. 274.

FOURTH.

What has been said disposes of the question of classification and we now consider:

The peculiarities of the Michigan system for the taxation of railroad property, and the specific points of discrimination claimed as violating the fourteenth amendment.

These may be outlined as follows:

I. The deduction of debts from credits is permitted to property owners generally, while denied to the corporations taxed by the state board of assessors. (*post* p. 120.)

II. The system of taxation through the medium of an average rate improperly treats the corporations taxed under act 173 differently than property owners generally in this:

A. That the rate is dependent upon the action of local assessing officers within whose jurisdictions complainant has no property, before whom it has no right to be heard, and against whose acts, if illegal, it has no redress. (*post* p. 146.)

B. That this system compels payment of taxes by complainant based on expenditures of local governments whose benefits they do not share, while other property owners pay taxes based upon the expenditures of municipalities to which their property belongs. (*post* p. 156.)

C. That complainant is denied the right of hearing on the *rate* of taxation which is accorded to other property owners. (*post* p. 162.)

D. That it is taxed at a higher rate than that applied to other property owners. (*post* p. 166.)

E. That it is denied the right of equalization which is accorded as between property owners in general. (*post* p. 173.)

F. That complainant's taxes are by this system fixed without reference to the needs of the community receiving the taxes. (*post p.* 179.)

G. That act 173 does not state the tax, or its object, which is the requirement and practice with regard to other tax laws. (*post p.* 186.)

H. That the same rate is required from all railroad companies regardless of the local rate of the municipalities in which their property is located. (*post p.* 194.)

I.

Does discrimination in violation of the fourteenth amendment result from permitting the deduction of debts from credits to property owners generally, but not to railroad corporations?

A. This question is incident to and governed by those of the right of the state to classify property for taxation purposes, and whether railroad property may be selected as a distinct class.

We have indicated that the classification made is proper and that where proper classification is made, the imposition of different rates of taxation, and rules of valuation, assessment and review upon the several classes, does not violate the fourteenth amendment. If the classification made by act 173 is proper, the refusal to permit deduction of debts from credits to corporations taxed under it, while permitting that deduction to other property owners, is not a discrimination denying equal protection of the laws.

That a difference of the character of that here urged, even if it should amount to a difference in the rule of valuation, which we do not believe can be the case, can be made, is clearly sustained in *Travellers' Life Ins. Co. v. Connecticut,* 185 U. S. 364, where the shares of stock possessed by resident and non-

resident stockholders in domestic insurance companies were taxed upon their value by different systems and at different rates; in the one class the real estate owned by the corporation was included in reaching the value, in the other it was excluded. It was held that the classification being proper the difference was permissable. I perceive no reason why that case does not govern here.

B. The purpose of act 173 is not to tax the property of the railroad corporation, simply because of railroad ownership, but because it is engaged in carrying on a particular business; the classification is made upon the basis of the *use* made of the property.

The credits of railroad corporations are railroad credits and railroad property arising in the carrying on of a railroad business and are so different from those of individuals and other corporations as to render it permissible and proper to place them in different classes, subject to different rules of valuation and assessment. Like the other railway property, such as roadbed, rolling stock, etc., the credits form an item of the property of the corporation necessarily engaged in its business; that business could not be continued, without the use of its present or equivalent credits and indebtedness.

(1.) A railroad corporation is created by statute for a specified purpose, with specified powers, and has no authority to engage in business or own property except in carrying out the purposes designated by law.

People v. River Raisin & L. E. R. R. Co., 12 Mich. 389, 395;

Am. & Eng. Ency. of Law (2nd. ed.) Vol. 7, pp. 704, 717.

It follows that everything owned by the railroad corporation, in the absence of contrary statutory provision, must be property used in the railroad business.

The general railroad law under which the complainant exists and does business in Michigan, does not extend the authority of the corporations organized thereunder to hold property beyond the purposes of their creation, and contains nothing to vary the general rule above stated.

By section 1 of article I, the authority to hold property is stated to be that upon filing articles of association, the shareholders become a body corporate,

> "capable in law of purchasing, holding and conveying any real and personal property whatever, necessary for the construction, maintenance and operation of said railroad and for the erection of all necessary buildings, yards and appurtenances for the use of the same." (§ 6223, *C. L.* 1897.)

By section 9 of article II, stating the general powers of railroad companies, they are authorized to receive, hold and take voluntary grants and donations of real estate and other property, but the estate thus received "shall be held and used for the purposes of such grant only." And to purchase "and take possession of, hold and use all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance and accommodation of its railroad," (§ 6234, *C. L.* 1897. *See also* §§ 6242, 6253, 6267, *C. L.* 1897), etc.

The express authority given by the act to create debts or credits refers exclusively to incidents of the railroad business. (§ 6269, 6333, 6253, *C. L.* 1897.)

(2.) That credits and choses in action generally of railroad corporations constitute railroad property as distinguished from property simply owned by railroad companies, has been adjudicated. A Michigan statute provided for the taxation of railroad companies at a certain graduated rate per cent on the gross income received in carrying on the business. In *Detroit, Grand Rapids & Western Railroad Co. v. Railroad*

Commissioner (119 Mich. 132), the railroad company, relator, claimed that the interest received by it on loans and deposits was not a part of the gross income received in carrying on its business, within the meaning of the statute. The court refused to accept this contention and held that the interest on loans and deposits should be included in the earnings from the railroad business, for the purpose of fixing the tax.

In *Chamberlain v. Walter* (60 Fed. 788, 793), it was held that a railroad is to be regarded a unit of which all its property is a part. The court there said:

> "A railroad is a unit, every part contributing to its purposes as a whole. If it be a corporation, its corporate purpose is the maintaining a railroad, and all and every part of this property must contribute to this purpose. Its right of eminent domain is limited to this purpose. This unit is made up of lands, personal property, *choses in action,* easements, all dependent upon and inseparable from each other, deriving their value from this inseparability,—from the fact that they contribute to this unit. They differ from every other species of property, and the discrimination made, as between them and other corporations and individuals, in the methods and instrumentality by which the value of their property is ascertained, is not invalid. If they separated the component parts and attempted to fix separate values upon them, they would enter into an impossible task. The value of the lands of a railroad depend much on the character and condition and completeness of its rolling stock. The utility and consequent value of the rolling stock depend largely upon the facilities at stations and at termini; the amount, location, and character of the land used therefore."

Franklin County v. Nashville, etc. Ry. Co., 12 Lea (Tenn.) 521, 537;

Adams Express Company v. Ohio, 166 U. S. 185.

Decisive of this question is *McHenry v. Alford* (168 U. S. 651, 656), which, though the property under discussion was not credits, but lands, presents an exact parallel with the case at bar. There the railroad corporation was specifically taxed at a certain rate per cent on its gross earnings to be in lieu of all other taxes on its property. Certain municipalities of the state then sought to tax the detached lands, within the land grant to the railroad company, which were covered by mortgage given to secure indebtedness incurred in constructing the road. This taxation was resisted on the ground that the lands were covered by the specific tax, and this position was answered by the claim that, as those lands were similar in all respects to the similar lands owned by individuals, they could not be exempted or covered by the specific rate of taxation, while owned by the railroad company, while the similar lands owned by individuals and others were taxed by an ad valorem rule, without violating the rule of equality of the fourteenth amendment. This court upheld the taxation of the lands under the specific rate upon gross earnings, regardless of the fact that a different rule was applied to similar lands differently held, on the ground that the lands furnished the security upon which the money was borrowed to build the road and so contributed to the carrying on of, and in fact were engaged in, the railroad business, and were railroad property, saying:

> "The lands are closely connected with the railroad and with its operation, and they are not in the same condition as a subject for taxation as are the lands of an individual. While we agree that property of the same kind and under the same condition and used for the same purpose cannot be divided into different

classes for purposes of taxation and taxed by a different rule simply because it belongs to different owners, yet, where the situation and the possible use and the present condition of the ownership of lands are wholly different, such as they are in this case, from ordinary ownership, a classification is not arbitrary nor unreasonable which places such lands outside the class of lands owned in the ordinary way by individuals."

The lands in that case stand in a similar position to the credits in this, except that opportunity there, to claim use in a railroad business, was not as strong as here. Here, both the credits and liabilities proven were those arising from the conduct of the railroad business. (*Record* 351, 266.) In that case, the reason the lands were held to be engaged in a railroad business was because they secured the payment of a debt necessarily incurred in constructing the road, and it necessarily follows that, if the security for the debt were, by reason of its being such security, property engaged in a railroad business, the debt itself, or a credit of a similar character, would likewise be.

(3.) The only credits proven to be possessed by the complainant or by any other railroad company, were those which arose from the conduct of the railroad business. There is no proof that the complainant or any other company possessed any credits, beyond those proven or, not engaged in its railroad business, and which would not come under the designation of railroad property. The presumption is that all of the property of a corporation is engaged in its business.

Adams Express Company v. Ohio, 166 U. S. 223; 165 U. S. 227.

C. Act 173 makes no specific requirement of the taxation of credits of the corporations subject to its provisions with-

out granting deductions for debts. If it be determined that such a deduction is necessary, to render the statute constitutional, its operation must be so limited as to exclude therefrom credits belonging to the company subject to its provisions to the extent of its bona fide indebtedness, applying the rule, that where two constructions of a statute are possible, one of which would render it constitutional, and the other unconstitutional, the former must be adopted.

In *First Natl. Bank of St. Joseph v. St. Joseph* (46 Mich. 529), a similar question to that here presented was passed upon by Judge Cooley.

The general tax law accorded a deduction of debts from credits; the law for the taxation of stock in National banks did not in terms make similar provision and the court construed the statute as not requiring the inclusion of credits and of the claim of discrimination, said:

> "In our judgment the state law and the act of Congress must be read together, and the state officers must act in harmony with the later. We think there is nothing to prevent this. While we do not ourselves discover any apparent inconsistency in the rule indicated by our statute, yet, even if such inconsistency might appear from a strict interpretation of the language, we think that there can be no difficulty in avoiding it in practice if found—as we think it will not be—to result from a construction of the state law by itself."

(2.) As there is no specific inclusion of credits if the provision permitting a deduction therefrom of debts is necessary to render the statute constitutional, it should be incorporated into the statute by construction. This would follow the action of the state board of assessors in making the assessment, as that board did not, in its assessment, include credits. (Record 431-438.) This taken as a contemporaneous con-

struction of the statute is entitled to consideration. (Attorney General v. Glaser, 102 Mich., 405.)

(3.) It will not be inappropriate to indicate that it was possible for the state board of assessors to value the property of the railroad corporations, as it says it has done, without including in the valuation their credits. There are a number of approved methods of finding the value of railroad, and other similar property. Three of those methods have been applied to the railroad property in this case, and their character, and the method of their application will be found to be outlined in detail in the record. (*pp.* 498, 499, 500.) Those plans are:

(*a*) *The stock and bond plan.*

(*b*) The inventory plan, which is the inventory value of the physical property, supplemented by the capitalization of the net surplus.

(*c*) The capitalization of net earnings.

The state board of assessors, in its report, stated that the assessments of 1902 were not made by the application of any one system of valuation, but comprehended all separate systems, and that the results produced by each, enter into the valuations finally placed upon the property. (1902 *Report of Board of State Tax Comrs. etc., p.* 51), and the witness Walker, the expert employed by the board of assessors to assist in the 1902 assessments, testifies (*Record, pp.* 613, 639) to the same effect:

(a) In the stock and bond plan of valuation, the value of the stock represents in a degree the judgment of investors of the value of the property. To that extent, credits might be taken into consideration, but it is the testimony of complainant's experts that the market in determining the value of stocks and bonds, takes into account the earning

capacity and dividends, but does not pay any attention to the value of the property or assets. (*See testimony of Johnson, Record, p. 884; also, testimony of Woodlock, Record, p. 660.*)

(*b*) In the application of the inventory method, credits might in certain cases be included, but could not, in the regular application of the plan, where there was a net corporate surplus to capitalize. Credits were not included in the application of this method in 1900, the results of which were before the board in making its assessments of 1902.

(*c*) In the capitalization of net earnings, physical property, and, of course, credits, could not be taken into consideration as the value would depend absolutely upon the amount of income, and would be uninfluenced by the amount of credits.

We have indicated that, while in two of the methods applied, it would be possible to include credits, and in the other, it would be impossible, in any one of the methods, credits are not necessarily included, and can readily be excluded. This leaves the subject to be determined by the testimony upon the question of whether the credits were or were not included. Two of the members of the state board of assessors testify that they were not included (*Record, p.* 431, 438), a third made affidavit to that effect, (*Record, p.* 438), and there is no testimony to the effect that credits were included to controvert this.

(4.) If act 173 could be construed as subjecting the credits of the corporations taxed thereunder to taxation, without deduction for indebtedness, and so construed violates rights

of complainant, such provision could be eliminated from the law without disturbing the statute.

Supervisors v. Stanley, 105 U. S. 305;
Evansville Bank v. Britton, 105 U. S. 322;
Insurance Co. v. Board of Assessors, 95 Mich. 468;
State v. Smiley, 65 Kansas, 255;
Pullman State Bank v. Manring, 18 Wash. 255;
State v. Duluth Gas & Water Co., 78 N. W. (Minn.) 1032.

Of this question *Supervisors v. Stanley* (105 U. S. 305) is decisive and a close parallel. In that case the New York statute for the taxation of monied securities permitted a deduction of debts from personal property upon the deduction being claimed by affidavit. The act for the taxation of bank shares including those of national banks contained no provision for the deduction of debts and the state court of appeals had construed the statute as requiring the taxation of bank shares without deduction for debts owed. Upon the claim of discrimination and resulting invalidity of the statute presented to this court, it was held, that it was bound by the construction of the state court that the statute did not intend the deduction of debts in taxing bank shares, and that, in view of this construction the act was:

(*a*) Valid so far as it applied to persons posessing no debts.

(*b*) Also valid so far as it applied to persons who did not claim the deduction.

(*c*) It was invalid only so far as it prevented the deduction when the basis therefore existed and it was claimed; in other works it was voidable in a proper case.

(*d*) That where the tax was assessed without deduction for debts in a case where the deduction

was proper, it was valid as to the portion thereof in excess of debts claimed

Hills v. Exchange Bank, 105 U. S. 319, 322.

D. (1.) Assuming that act 173 provides for the taxation of only those credits which are a part of the railroad business, without deduction, that the act, to this extent is constitutional we do not believe can be questioned. If the state board of assessors included any credits not a part of the railroad business, though it is clear that it did not (*Record*, 431, 438), it exceeded its authority.

(2.) The complainant made no claim, at the time of the assessment or upon the review, that it possessed, or there was included in the assessment, credits which represented investments apart from the railroad business, nor is there any proof in this case that it possessed any such property.

> "Presumably, all that a corporation has it used in the transaction of its business, and if it has accumulated assets which, for any reason, affect the question of taxation, it should disclose them. It is called upon to make return of its property, and if its return admits that it is possessed of property of a certain value and does not disclose anything to show that any portion thereof is not subject to taxation, it cannot complain if the state treats its property as all taxable." (166 U. S. 223.)

(3.) The complainant made no complaint of the unwarranted inclusion of its credits without deduction for debts owed by it and made no application to the board of review, to have a deduction on account of indebtedness. The statute gave full opportunity for hearing, and complainant is estopped from questioning the assessment, by reason of the inclusion of any element therein which should not have been included

unless it appeared and protested. It was for it to object to the inclusion of any credits, which could not properly be included, and to apply for a reduction on account thereof.

First Nat. Bank of St. Joseph. v. St. Joseph, 46 Mich. 526;

Central Pacific Ry. Co. v. California, 162 U. S. 128;

Pittsburgh, etc. R. R. Co. v. Backus, 154 U. S. 421;

Township of Caledonia v. Rose, 94 Mich. 216;

Stanley v. Supervisors of Albany, 121 U. S. 535; 105 U. S. 306;

Hepburn v. School Directors, 90 U. S. 480.

In *First National Bank of St. Joseph v. St. Joseph* (46 Mich. 526), the question before the court was whether a discrimination resulted from the state statute permitting deduction of debts from credits, where no such deduction was granted in the assessment of shares of national banks. It was there held that the plaintiff, in order to be entitled to relief, should have made its claim for reduction before the assessment was made absolute.

In *Stanley v. Supervisors* (121 U. S. 535, 550) it was said:

> "In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. * * * To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of

the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive whatever errors may have been committed in the assessment."

Only where demand would have been unavailing, is it unnecessary to claim the deduction.

Hills v. Exchange Bank, 105 U. S. 321;

Whitbeck v. Mercantile National Bank, 127 U. S. 193.

E. The deduction of debts from credits, or from personal property is not a change in the rule of valuation, does not vary the rule of assessment, or violate the requirement of assessment at cash value, and is nothing more or less than an exemption. In such cases the property which is taxed is assessed and valued and taxed in the same method in which it would be taxed if credits were included.

F. The propriety of permitting a deduction of debts from credits to one and not to another class, and the effect of the resulting discrimination, has never been directly adjudicated by this court (except possibly under the statute permitting the taxation of shares in national banks and forbidding discrimination). A justice of this court (Field), sitting in circuit in California, considered and passed upon this question adversely to our contention, in two cases (San Mateo County v. So. Pacific R. R. Co., 13 Fed. 722 and 145; Santa Clara County v. So. Pacific Ry. Co., 18 Fed. 385). In these cases was considered the constitutional provision of California (18 Fed. 390) declaring:

"A mortgage, deed of trust, contract or other obliga-

tion by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby."

And that,

"Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof."

The latter provision was claimed by the railroad corporations to deprive them of due process, and equal protection, of law. The decision reached was that by applying one rule to railroad and other quasi public corporations and their property, and another to other property, the railroad companies and their property were discriminated against, and that such classification was based on improper grounds; and it was affirmatively stated that any classification of property for taxation dependent upon the nature of its ownership rather than on the character of the property, was improper.

(1.) Those cases are different from the case here presented in the following particulars:

(*a*) In this case, the deduction of debts from credits given by statute to the general property owner throughout the state is simply an exemption of credits to that extent to that class of property, while in the other class, that formed by act 173, they may be taxed.

The rule is settled that once the classes are properly formed, then it is permissible to apply different incidents, rules of valuation and rates, and to take into consideration different elements, in the assessment and taxation of the different

classes, even to the extent of exempting entirely the property of one class and throwing the entire burden upon the property of another class.

The language used by the circuit judge upon this question takes this view. He says:

> "In one class properly segregated it would be competent for the state to exempt any part of the property or all of the property, while the same kind of property in another class was made to bear the whole burden of taxation, and a *fortiori* in reducing credits by debits in one class, and not in another, or exempting credits entirely in one class and taxing them in another, does not exceed the power of the state, nor deny the equal protection of the laws." (*Record,* 849, 848.)

In *Florida, etc. Railroad Company v. Reynolds* (183 U. S. 480), a statute selecting for the purpose of reassessment property of railroad companies only, was held valid, the court saying:

> "If the state had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to over-throw its action."

Missouri v. Dockery, 191 U. S. 170, 171.

(b) The Michigan system is limited to taxing, by a special system, the property of railroad corporations which is engaged in their separate and peculiar business. This did not seem to be the case with the California law, and the system there applied the separate rule to all the property owned by railroad and other quasi public corporations.

(c) In the California cases the effect was to

cause the railroad corporation to bear the burden of taxation of the mortgagees or bond holders. (18 Fed. 392-3.)

(2.) If these differences are not sufficient to distinguish the California cases from that at bar, we can simply add that those cases are not in accord with the later decisions which have made clear the character and extent of the application of the fourteenth amendment to matters of taxation. Those decisions proceeded upon theories and set forth rules of law as governing the issues presented, which are entirely inconsistent with the later cases. Some of these errors are as follows:

(*a*) That the fourteenth amendment requires the taxation of the property of the different classes to be according to a rule of uniformity. (13 Fed., pages 733-735; 18 Fed., 395.)

It is now settled that, once the classification is established, the classes do not thereafter necessarily bear any relation to each other in any system of taxation which a state may see fit to adopt, but regulations, rates, methods of valuation, and exemptions can be applied or given to one class without regard to the rules applied to other classes.

(*b*) That assessments and taxation of property to satisfy the requirements of the amendment must be made with reference to a common ratio. (18 Federal, 400; 13 Fed., 734-5.) In other words, that no classification could be such as to justify independent treatment of the classes.

(c) That elements of value cannot be considered or eliminated in one class which are not likewise treated in the other classes. (18 Fed., 401-2; 13 Fed., 737-8.)

(*d*) That where there is only one rate, no reason for, or basis of, classification, which applies different rules of valuation, exists, and different rules of valuation can not be applied to the different classes. This theory would entirely destroy the right to give an exemption to one class that is not given to another class where the same rate is applied to each.

(3.) Each of the cases decided by Mr. Justice Field was reviewed by this court and disposed of on other grounds, despite his attempt, as indicated by his opinion, (118 U. S. 422), to place the decision on the constitutional grounds determined by him at circuit.

The law upon the several questions surrounding the classification of railroad property, the application to it of peculiar rules of valuation and assessment and the application thereto of different rates, is now so settled that this court *now* would not, and could not without violence to numerous of its decisions in point, sustain the rulings of Mr. Justice Field. His decisions are pioneers in the application of the fourteenth amendment to questions of taxation, and among the earliest in which the protection of this amendment was invoked in such matters, and of the first holding it restrictive of the taxing power of the states; this court had just said (96 U. S. 105), that this amendment "imposed no restrictions upon the states in regard to unequal taxation"; and the doctrine of classification was not then well understood, as is indicated by a comparison of these opinions with the rulings of subsequent cases. That property could be classified was established, but the extent of that classification was not defined or settled as it is today when it is established:

That any classification which bears a *just* and *reasonable* relation to the purposes for which made is permissible; that railroad property forms a separate class for purposes of taxa-

tion; and may, for those purposes, be differently distributed than other property; be accorded one hearing, while two or more are given to property owners generally; be reassessed without the re-assessment of other property; have its real estate valued every year, while other real estate is valued once in five years; be refused discount while it is given to property owners generally; be alone subjected to taxation to pay salaries of railroad commissioners; be taxed specifically, while other property is taxed upon its value; be subjected to assessment by a state board, where other property is assessed locally; and where property is properly classified, a different basis of valuation can be applied to the different classes,—thus one class of corporations can be taxed on the par value of its stocks and bonds, regardless of the actual value, while another class is taxed upon the actual, regardless of the par value; that all corporations may be taxed upon the face value of their securities, without causing discrimination between those whose actual value is above and those below actual value; that shares in a corporation may be separately classed and taxed for different purposes, the real estate of the corporation being in one class considered in reaching the stock's value, while not considered in the other.

Gulf, etc. R. R. Co. v. Ellis, 165 U. S. 150;
McHenry v. Alford, 168 U. S. 651;
State R. R. Tax Cases, 92 U. S. 575;
Col., etc. R. R. Co. v. Wright, 151 U. S. 470;
Kentucky Railroad Tax Cases, 115 U. S. 321;
Florida, etc. Ry. Co. v. Reynolds, 183 U. S. 480;
Chamberlain v. Walter, 60 Fed. 788;
Louisville & N. R. Co. v. Louisville, 29 S. W. (Ky.) § 865;
Charlotte, etc. R. R. Co. v. Gibbes, 142 U. S. 386;

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421;

Bell's Gap Ry. Co. v. Penn., 134 U. S. 232;

Merchants & M. Nat. Bank v. Penn. 167 U. S. 461;

Travellers' Life Ins. Co. v. Connecticut, 185 U. S. 364.

The effect of these decisions can be syllogized by saying that since Mr. Justice Field's opinion this court has decided that:

(*a*) Property engaged in railroad business may be made a special class for taxation purposes.

(*b*) Different rates and rules of valuation, assessment and review can be applied to the different classes.

(*c*) It is not essential that the assessment in the different classes be at the same rate or that the valuation be reached by a common ratio.

(*d*) Other and different rules of classification are proper and can be applied by a state in a taxing system than in classification for other purposes.

(*e*) Deductions can be made and elements considered in reaching the value in one class that are not made or considered in another.

(*f*) That once a proper classification is made, so far as the fourteenth amendment is concerned, the classes are thereafter separate and distinct, subject to different treatment in every respect in the legislative discretion, including the right to wholly exempt one class while taxing another.

(*g*) That property covered by the railroad mortgage is engaged in a railroad use which justifies a different classification.

(h) That classification may be made on the basis of use by quasi public corporations.

(4.) It is evident that the decisions of Mr. Justice Field in the San Mateo and Santa Clara County cases have never been regarded as laying down correct principles as to the application of the fourteenth amendment, and have never been followed in California. The constitutional provision declared unconstitutional in those cases is still followed and railroad and other property is still taxed thereunder, and the taxes imposed upon the railroad corporations are uniformly paid without protest.[1] (*Record, page* 475.)

In *Central Pac. R. R. Co. v. California,* (162 U. S. 91, 117), while the same question presented in the previous cases, was again raised, it was waived by counsel for the railroad company. This is significant of the fact that the railroad companies and their counsel have at least regarded the early decisions of Mr. Justice Field as being in effect overruled by the later cases.

(5.) The chronological history of the decisions of Judge Field in the *San Mateo & Santa Clara County Cases* (13 Fed. 722; 18 Fed 385), in connection with the *Albany Bank Cases,* shows conclusively that this court has expressly refused to recognize the decisions of Judge Field as entitled to consideration in opposition to the rule declared in the *Albany Bank Cases,* and indeed that he did not intend to run counter to the Albany Bank Cases.

In *Supervisors v. Stanley* (105 U. S. 305), decided at the October term, 1881, it was distinctly held that while the

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[1]Note. The record (at p. 475) is in error as it omits the word "never" in the third paragraph of the letter of Mr. Wm. H. Alford. This should read: "The board has *never* followed the cases cited in your letter."

discrimination created by the New York Statute in refusing deduction of debts from credits in the case of national bank shares was unlawful, the statute was not rendered void, but was voidable only at the instance of one who had debts to deduct, *and who had exhausted his remedy to that end.*

In the cases of *Hills v. Exchange Bank*, and *Evansville Bank v. Britton*, decided at the same term immediately following the decision of the Stanley case, and reported in the order of their decision, the same rule was laid down. The solemnity of the decision was emphasized by the dissent of Justice Bradley from the judgment of the court *in all three of the cases* so far as they held the law valid except as to those who were actually indebted, claimed the benefit of deduction and actually set it up in a suit brought for relief. (105 U. S. 326.)

The *San Mateo County Case* was decided Sept. 25, 1882, and the *Santa Clara County Case* Sept. 18, 1883; both were actions to recover taxes assessed. In neither of the cases was reference made to *Supervisors v. Stanley*, although *Evansville Bank v. Britton* was cited to the effect only that taxation of shares without permitting the shareholders to deduct from the assessed valuation the amount of indebtedness which was allowed in case of other investments of monied capital was a discrimination against the act of Congress, and illegal. No reference was made to the decision in either the *Stanley*, the *Hills* or the *Britton Case* to the effect that such discrimination rendered the statute invalid only to the extent of actual injury shown in its operation.

It was held in both the *San Mateo and Santa Clara Cases* that the constitution of California expressly forbade the deduction in case of railroad indebtedness, that no notice of the assessment was provided by law, that no opportunity was in fact given the railroads to be heard as to their assessment, and that the deduction was not in fact made, Judge

Field intimating that the discriminating feature of the statute alone would have rendered it invalid only to the extent that injury was suffered.

The *Stanley Case* was again reviewed in this court May 2, 1887, several years after the decisions by Judge Field in the *San Mateo and Santa Clara Cases*. (121 U. S. 535.)

While these latter cases were cited in the briefs of counsel, they are not referred to in the opinion of the court in the *Stanley Case*, but the decision of that case as first reported in 1881 was solemnly re-affirmed in this language:

> "After full consideration we held [in Supervisors v. Stanley] substantially this: That the statute of New York was in conflict with the act of Congress so far as it did not permit a stockholder of a national bank to deduct the amount of his just debts from the assessed value of his stock, while by the laws of the state the owner of all other personal taxable property was allowed to deduct such debts from its value; but that *neither the statute nor the assessment under it, was for that reason void.* If the stockholder had no debts to deduct, the mode of assessment adopted was not invalid as to him; he could not complain of it nor recover the taxes paid pursuant to it. If he had debts, the assessment without a deduction for them, in the estimate of the taxable value of the stock, *was only avoidable.* The assessing officers in making the assessment were acting within their authority until duly notified of the debts which were to be deducted. In such case, therefore, the duty devolved upon the stockholder to show to the assessing officer what his debts were, and to *take such steps as were required by the law to obtain a correction of the over-assessment.* We therefore decided * * * that for the taxes collected upon the assessments alleged in the other counts, no

> recovery would be had; the stockholders there mentioned not having produced evidence that they had presented to the assessors an affidavit of the amount which they would be entitled to deduct from the assessment of their shares * * * *or that they had taken any steps under the laws of New York to correct the over-assessment* complained of."

The rule as thus laid down in the previous decision was expressly affirmed, the court saying:

> "If the assignors of the plaintiff had any just grounds of complaint of the assessment as excessive, they *should have pursued the course provided by statute for its correction*, or resorted to equity to enjoin the collection of the *illegal excess*, upon payment or tender of the amount due upon what they conceded to be a just valuation."

We submit that this statement of the history of the various decisions referred to conclusively shows that the decisions in the *Albany Bank Cases* are express authority for the proposition that the railroad companies cannot complain of the alleged discrimination (even if the Michigan statute should be construed as requiring it) without showing affirmatively that credits were in fact included in the assessment (without deduction of debts to the extent of such included credits), and thus an actual injury occasioned; and that even in such case, the assessment would be invalid only to the extent of the unlawful excess.

G. Assuming that the application of a different rule, in regard to the deduction of debts from credits, to railroad corporations than to other property owners and property would disturb the rule of equality,—then we contend that the general tax law of Michigan permitting the deduction of debts

from credits is unconstitutional as violating the rule of uniformity required by the state constitution, as a deduction of debts is permited from credits while not permitted from other species of personal property.

The Michigan constitution, at present, provides for three systems of taxation:

First, "an uniform rule of taxation, except on property paying specific taxes" and property subject to assessment by a state board of assessors, to be provided by the legislature;

Second, an uniform rule of taxation for such property as shall be assessed by a state board of assessors, to be provided by the legislature, limited to the property of such corporations as the legislature may select;

Third, the collection of specific taxes from corporations.

The general tax law is the enactment carrying into effect the first system of taxation enumerated; all property taxed according to that system must be taxed by an uniform rule, and different modes of assessment, valuation, deduction, or different rates, as to or upon that property, are not permissible.

Pingree v. Auditor General, 120 Mich. 95.

The Michigan constitutional provision requiring uniformity is more stringeat in operation than is the fourteenth amendment. The system declared invalid in the case last cited, by reason of the violation of the provision of the state constitution requiring uniformity, would have been valid as measured by the fourteenth amendment as construed by this court. An uniform rule means that all property subject to it shall be treated alike as to rate of taxation, method of valuation, and that "all property shall be subject to the same rule" of taxation. The legislature can, however, provide for exemptions.

State statutes permitting deduction of debts from credits,

while not permitting the deduction of debts from other personality, have been held to be invalid.

In re Construction of Revenue Law, 48 N. W. 813 (S. D.)

In re Assessment and Collection of Taxes, 54 N. W. 818, (S. D.)

Standard Life & Accident Association v. Assessors, 95 Mich. 466;

Cit. St. Ry. Co. v. Com. Council, 125 Mich. 694;

Exchange Bank v. Himes, 3 Ohio St., 1;

San Mateo Co. v. So. Pac. R. R. Co., 13 Fed. 722;

State v. Smith, 63 N. E. 214—Dissenting opinion;

Santa Clara Co. v. So. Pac. R. R. Co., 18 Fed. 385;

State v. Duluth Gas & Water Co., 78 N. W. (Minn.) 1032;

Jacksonville v. McConnel, 12 Ill. 138;

People's Loan, etc. Association v. Keith, 153 Ill. 609;

People v. Worthington, 21 Ill. 171;

People v. McCreery, 34 Cal. 432;

People v. Gerke, 35 Cal. 677;

People v. Blk. Diamond Coal Co., 37 Cal. 54;

People v. Whortenby, 38 Cal. 461.

Contra,

State v. Smith, 63 N. E. (Ind.) 25; 64 N. E. (Ind.) 18, Rehearing;

State v. Moffett, 67 N. W. (Minn.) 68; 64 Minn. 292;

Fayette Co. v. Bank, 10 L. R. A. 196;

Florer v. Sheridan, 137 Ind. 28;

Central Pac. R. R. Co. v. Board of Equalization, 60 Cal. 35.

The following cases, which refer to discrimination against national banks by permitting deduction of debts from credits

and not permitting them from the shares of national banks; sustain the proposition:

Merchant's Nat. Bank v. Shields, 59 Fed. 952;
Evansville Nat. Bank v. Britton, 8 Fed. 867;
Whitbeck v. Merchant's Nat. Bank, 127 U. S. 193;
See Extended note, 45 L. R. A. 751.

19

II.

A.—Is the rate dependent on the action of local assessing officers within whose jurisdiction complainant has no property, before whom it has no right to be heard, and against whose acts, if illegal, it has no redress.

(1.) This objection is based on a false premise; it assumes that local officers fix and determine the rate; such is not the fact.

The rate is fixed in the constitution. It is the average rate imposed on other property of the state, and to be made certain in amount by the mathematical calculation set forth in the statute, and—"a rate ascertained as the result of that which is enacted may be regarded as authorized by law, as well as a rate declared in terms." (Morton v. Comptroller, 4 S. C. 477.)

The purpose to be effected by the establishment of this rate was equality. It was desired to place the property of the corporations taxed under act 173 on the same basis in the amount of taxation imposed as that assessed throughout the state generally. This occasioned a necessity for a system of measurement to apply the rate borne by the general property in the state to the property of the corporations, and to satisfy this necessity, and to produce the equality, the most effective plan was found to be the average rate. This clearly does not leave the rate to be determined by the local officers or municipalities.

(a) The local officer does not act in contemplation of the taxes levied under act 173, and no duty is laid upon him because of that system. He proceeds in every respect as he proceeded previous to the amendment of the constitution and the enactment of act 173. They might be repealed and he would act no differently than now.

(*b*) Every act of the local officer pertains to his duty to his local municipality. He or it cannot directly affect the average rate. They have no authority over it, or any element entering into it for the purpose of directly affecting it, or its amount. They are charged with the duty of raising taxes within and for their particular municipality, and act within the limits of their jurisdiction without regard to the effect which their action may have on the rate of taxation to be imposed upon the property of corporations subject to act 173.

The taxation which was the result of the action of the municipality and its officers becomes, under the constitution and statute, an element of the average rate to be imposed upon the property of complainant. This is not because they have any authority over the rate, but because the result of their action,—the tax rate which that action imposed upon the property within the municipality—and the action of every other local municipality throughout the state is taken as the measure by which the amount of the corporations' taxes are determined.

(*c*) If the constitution had referred to the taxes of a particular past year as fixing the basis of the railroad taxes for all time to come, there would be no question of the validity of the method of fixing the rate. What has been done is in effect identical with that, though more equitable, as the taxes upon the railroad corporation vary from year to year with the variation of the general assessments throughout the state, and the equality which was sought is produced.

(*d*) It is not the local officer or municipality

upon whose action depends the tax rate to be imposed upon the railroad corporation, but it is the *fact*,—the figures and data—which has come into existence by reason of their action and which constitute a fact of record. The question is, what rate have the general properties of the state borne, and when we determine that question, we find the rate which the railroad property should bear.

(*e*) If we assume that the local officer or municipality might act so as to increase in any degree the average rate, the increase does not result from any act directed to that end, but from an act directed to increase the taxes assessed within the municipality, and any increase in the average rate can only occur from the fact of an increase in the taxes borne by the general property.

(*f*) If the fact that the result of the action of the local officer or municipality enters into the rate makes that ratè any the less legislative or constitutional, the same effect would be produced by the act of any property owner who, by doing what he has full authority to do in moving his property into or from a particular taxing district, increases or decreases the tax rate in that district. It will not for a moment *be claimed* that this renders the rate any the less legislative or constitutional.

The rate is from year to year an uncertain amount until the facts have transpired which are to fix it. In this respect it is similar to the taxes proportioned upon earnings which have been universally sustained. There the tax is dependent in amount upon the earnings, but it would not be contended for a moment that the tax was fixed and determined by the earnings. The true state-

ment is it is fixed and determined by the legislature but measured by the earnings.

The people had full authority to fix this rate, and having that authority, fixed it to be the same rate as is paid by a certain other class of property. The rate was fixed necessarily by the body which had the authority to fix it, rather than by the municipalities, by whose rate it was measured.

We can hardly conceive complainant to be honest in the contention that this rate is not fixed in the constitution, and that it is dependent upon the action of any local municipal bodies and officers.

(2.) The legislature, by statute, and likewise—the people, by constitutional provision, have authority to impose any rate of taxation they see fit. The rate imposed, the reasons for its imposition and the basis of measurement, are all matters of policy which do not concern the courts, and which are exclusively within the jurisdiction of the legislature and people. (Spencer v. Merchant, 125 U. S. 345; Fay v. Wood, 65 Mich. 401).

Mr. Chief Justice Marshall said, of the power of taxation:

> "The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation." (McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316, 428.)
>
> "This vital power may be abused; but the constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom and justice of the representative body and its relation with its constituents furnish the only security,

> where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally." (Providence Bank v. Billings, 4 Peters (29 U. S.) 568.)

In *Wharton v. School District* (42 Pa. St. 364), attempt was made to enjoin school directors from the levy of a tax regularly voted. It was there said:

> "The power of taxation, altogether legislative and in no degree judicial, is committed by the legislature, in the matter of schools, to the directors of school districts. If the directors refuse to perform their duties, the court can compel them; * * * but if they exercise their unquestionable powers unwisely, there is no judicial remedy." "This [says Judge Cooley] is a clear and strong statement of a wise and salutary general principle." (Taxation (2 Ed.) 343.)

It would be possible for the people or the legislature to have taxed these corporations at any fixed rate (Guthrie on 14th Amendment, p. 128); say one, two or three dollars upon each one thousand dollars of valuation, or to use any other basis of measurement; e. g., it would have been possible to provide that the rate imposed on corporations of Illinois should be the rate imposed on corporations by Michigan. Here we would have a rate measured by a basis beyond the jurisdiction of the state, over which the state had no control, before whom the corporations could not appear, against whose illegal action there would be no redress, and still the rate would not be subject to constitutional objection, as the matter of amount is entirely one of legislative discretion.

The subject is one over which the legislature and people had plenary control; it was for them to designate the rate or the rule by which it should be measured, and the mode of ascertaining the rate is immaterial. Of this, the decision of this court in *Home Life Insurance Co. v. New York* (134

U. S. 594, 660), is conclusive; it was there said, of a tax imposed upon certain corporations:

> "The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

The same rule was enunciated in *Maine v. Grand Trunk* (142 U. S. 217, 228, 229), where a rate of taxation was fixed by reference to receipts from interstate commerce over which the state, of course, had no control. It was there said:

> "The character of the tax or its validity is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation, is open to the consideration of the State, in determining what may be justly exacted for the privilege. The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable and likely to produce the most satisfactory results, both to the State and the corporation taxed. * * * A resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation. If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the

State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred."

Comr. of Railroads v. Wabash Railroad Co., 126 Mich. 115;

Cumberland & Penn. R. R. Co. v. State, 92 Md. 668, 90;

Plummer v. Coler, 178 U. S. 115, 127, 134:

Snyder v. Bettman, 190 U. S. 254;

Wisconsin & Mich. Ry. Co. v. Powers, 191 U. S. 387.

As said by Mr. Justice Bradley in *Legal Tender Cases*, (12 Wall. (79 U. S.) 561,

"the nation itself, speaking by its representatives has a choice of methods and is the master of its own discretion,"

and having full authority over the mode of taxation and rate to be imposed, it can use any basis of measurement it desires, and the question of policy and government decided by its action is not open to question. It was said in *State v. Terre Haute* (130 Ind. 443):

"Where the principal subject belongs, there the incidents belong. Means, methods and the like belong to the department that is vested with power over the general subject. It is for that department to make choice of modes and means."

Society for Savings v. Coite, 73 U. S. 594, 608;

State v. Haworth, 122 Ind. 466, 467.

(3.) Complainant is not, however, without right to appear before the local reviewing boards and be heard on questions affecting its interests. If it is interested in having perfected any defects of undervaluation of the property, the average rate imposed upon which is to be imposed upon its property, the statute gives authority to it to appear before the board of review and makes it the duty of that board (at its first session), to correct assessments which are either under or over value, and it is likewise the duty of the board of supervisors to eliminate from taxes to be imposed all illegal items.

The language of the statute (§ 3852, *C. L.* 1897), in this particular is, that the board of review

> "*of its own motion, or on sufficient cause being shown by any person,* shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, *and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act.* The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column." (3852 *C. L.* 1897.)

The board of review (at its second session),

> "at the request of any person whose property is assessed thereon or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment will make the valuation thereof relatively just and equal." (3853 *C L.* 1897.)

The aim of these statutes is to secure correct assessment

rolls, with the taxable property placed thereon at its true cash value. If this does not result from the assessment by the supervisor, it is competent for the board of review, either on its own motion, or on application (at least by any party interested, and probably by any person) to correct the assessment. The effect is to give complainant the right to object in the several municipalities to irregular and illegal assessment of other property than its own.

That the authority of a person to object upon review to the irregularity of assessments made is not limited to those of his own property, is indicated by the statute and the cases.

Avery v. East Saginaw, 44 Mich. 590;
Dundee Mort. Trust & Invest. Co. v. Charlton, 32 Fed. 192, 194;
State v. Dodge Co., 20 Neb. 600;
St. Louis Bridge Co. v. People, 128 Ill. 428;
Detroit Common Council v. Detroit Board of Assessors, 91 Mich. 88.

In *St. Louis Bridge Co. v. People* (128 Ill. 428), the statute was that the assessment may be reviewed on application of "any person who shall complain;" in this, being similar to our statute, and it was held that the right of complaint was not confined to taxpayers, by the terms of the section.

The appearance to correct assessments of the general property is not required to be before the local officers, but may be before the board of state tax commissioners, which has supervision of all of the tax rolls in the state. (Act 154 of 1899, §§ 152, 153.)

(4.) In the particulars to which this objection relates, our statute is similar to that of Missouri, (*See post p.* 183) imposing school taxes on railroads. There, the average rate levied in the several municipalities of the county is imposed upon the railroads, and the system has been held to violate

no provision of the state or Federal constitutions. In one case, the objection raised and overruled was, that the act was invalid as requiring the use, in determining the average rate, of taxes assessed in municipalities in which the railroads had no property.

Chicago & Alton R. R. Co. v. Lamkin, 97 Mo. 496.

(5.) The taxpayer is not entitled to notice of and opportunity for hearing at each stage of the proceeding, which results in imposing taxes upon his property. It has uniformly been held sufficient if he is given an opportunity for hearing at some stage of the proceeding, or in proceedings to contest enforcement of the tax. In this case, his rights are fully preserved by permitting him, in judicial proceedings, such as the present, to inquire into the legality and regularity of the proceedings resulting in this tax. (*Cases see post pp.* 165, 196, 200.)

B.—Is the average rate system invalid as compelling the payment of taxes by complainant based on expenditures of local governments whose benefits it does not share, while other property owners pay taxes based on expenditures of the municipalities in which their property is located?

This question is closely related to that last discussed, and the considerations there advanced as upholding the plenary authority of the legislature to fix and determine tax rates, and to use for that purpose any basis of measurement it sees fit, are equally controlling here.

The following additional answers to complainant's claim may be made:

(1.) The tax imposed upon the property of the railroad corporations is not for the same purpose as that imposed upon the property throughout the state generally which enters into the average rate. It is a distinct and particular state tax devoted to a particular purpose. (120 Mich. 102.) This we have pointed out permits a diversity of rate and of incidents of taxation. It was for the legislature to impose upon this property such a rate as it deemed necessary and to arrive at that rate by any process which it chose. Its judgment in this respect is purely political. The matter was entirely one of discretion and complainant's only redress is through a change in the system brought about by the people.

(2.) A certain amount each year is required to pay expenses of the state, and its municipalities. The entire is made up of contributions from all classes of property. What is paid by one is not necessarily paid by another class, and the burden is the same in each class,—the general property paying the expenses of its local government, and its contribution to the state government, and the railroad property, its specific contribution to the specific fund provided, measured by what the general property has paid. The revenue derived

from act 173 serves to decrease the average rate through decreasing to that extent the amount necessary for the municipalities to raise for the support of the schools and this equalizes the burden.

(3.) The complainant objects to this system as fixing its tax rate by a reference to the payments made by the local municipalities for, what it terms, private, as opposed to governmental, purposes, and insists that as it derives no benefit from these expenditures for private purposes, its tax rate should not be affected in amount by the fact that disbursements for those purposes have been made.

It seems unnecessary to point out any benefit to the railroad corporation by these expenditures of the local municipalities, as we do not think that has any bearing upon the question. (*Thomas v. Gay*, 169 U. S. 280.) However, these disbursements do have a direct influence upon the railroad corporation and its business, and are fully as, if not more, beneficial to it as to the individual residing in the municipality:

(*a*) The distinction which complainant makes between governmental and private purposes in the several municipalities in the state does not apply when the question is considered from the standpoint of the authority of the state to subject the owner of property to taxation therefor. In either case the exaction is a tax. It is a tax which can only be exacted for the benefit of the whole public, and is private only in that it is under the direct supervision of the municipality imposing it, rather than the state itself.

See Kelly v. Pittsburgh, 104 U. S. 78.

(*b*) The prosperity of the railroad corporation, and the continuance, and increase of its traffic,

both passenger and freight, depend on the prosperity of the municipalities of the state, and the attractiveness of and advantages afforded by them.

(*c*) The railroad corporation is not limited in its business to the municipalities through which it runs. Its business comes from all parts of the state and all its different municipalities, through different avenues, by rail, water, and otherwise. The fact that the Chicago & Northwestern has no line of road in Detroit does not determine the question of whether or not it profits by the prosperity and advantages of the citizens of that city, or the improvements which it makes.

(*d*) The very elements of improvement to which complainant objects, namely,—boulevards, public parks, and the like, are of more advantage and value to the railroad corporation, whether located in its immediate vicinity, or at a distance, than to the citizens of Detroit, so far as the question of pecuniary return is concerned. They operate to stimulate the railroad company's passenger traffic, and affect the growth of the community in which located, which, of course, has a direct effect on the profits of the railroad company, and it is well known that railroad companies maintain parks and buildings very similar to those objected to and which affect their business in similar ways.

(*e*) As to the class of corporations created by act 173, the state is a distinct municipality, and the boundaries between the different townships and counties become unimportant and cannot affect the question in the slightest. Every railroad corporation in the state is properly subject, (in reaching the average rate to be applied to it), to all

of the taxes in the municipality in which it exists, i. e., in the state, in the same manner as a person owning property on one street of a large city is subject to taxation for improvements, and conditions which occur in other parts of the city and do not appear to directly affect him.

It was for the legislature to district the state as it was fit. The question of boundaries was for it alone to determine, as well as what conditions and taxes within the district should be permitted to influence and affect the rate applied to the railroad corporation.

Williams v. Eggelston, 170 U. S. 310, 311;
Forsyth v. Hammond, 166 U. S. 518.

(*f*) The problem presented to the legislature in suggesting amendments to the constitution, and to the people in adopting them, was not what one railroad in one particular part of the state should bear as a tax rate, but what would be a fair and equitable rate for all railroads of the state, taking into consideration the many municipalities in which the roads exist, and the discrepancy in rate which would result if each were taxed according to the rate of the municipalities through which it ran, or in which it had property. The discrepancies from such a system are pointed out (*post* 170), and its result would be to burden one railroad company for twice as much as another, when there is in fact no difference in the character of their property and no reason for a difference in rate. With this problem presented, the legislature was justified in selecting the average rate.

(4.) The fact that the burdens of taxation, as compared with the benefits, are unequally shared does not invalidate

the taxes. The state may apportion its taxes as it chooses and if property receives any benefit from disbursements, however small, it can be made to share equally in the taxation, though its property is not in the municipality, making the disbursements for which the tax is levied and though some other property has been more directly benefited.

Foster v. Pryor, 189 U. S. 325, 331;

Waggoner v. Evans, 170 U. S. 592;

Thomas v. Gay, 169 U. S. 264;

Kelly v. Pittsburgh, 104 U. S. 78.

In *Kelly v. Pittsburgh,* it was said:

"We are unable to see that the taxes levied on this property were not for a public use. Taxes for schools, for the support of the poor, for protection against fire, and for water-works, are the specific taxes found in the list complained of. We think it will not be denied by any one that these are public purposes in which the whole community have an interest, and for which, by common consent, property owners everywhere in this country are taxed.

There are items styled city tax and city buildings, which, in the absence of any explanation, we must suppose to be for the good government of the city, and for the construction of such buildings as are necessary for municipal purposes. Surely these are all public purposes; and the money so to be raised is for public use. No item of the tax assessed against the plaintiff in error is pointed out as intended for any other than a public use.

It may be true that he does not receive the same amount of benefit from some or any of these taxes as do citizens living in the heart of the city. It probably is true, from the evidence found in this record, that his tax bears a very unjust relation to the benefits received

as compared with its amount. But who can adjust with precise accuracy the amount which each individual in an organized civil community shall contribute to sustain it, or can insure in this respect absolute equality of burdens, and fairness in their distribution among those who must bear them?

We canont say judicially that Kelley received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The waterworks will probably reach him some day, and may be near enough to him now to serve him on some occasion. The schools may receive his children, and in this regard he can be in no worse condition than those living in the city who have no children, and yet who pay for the support of the schools. Every man in a county, a town, a city, or a state is deeply interested in the education of the children of the community, because his peace and quiet, his happiness and prosperity, are largely dependent upon the intelligence and moral training which it is the object of public schools to supply to the children of his neighbors and associates, if he has none himself." (104 U. S. 81, 82.)

(5.) The state has determined that the railroad corporations receive a protection and benefit from its laws equal in amount to the expenditures and taxes in the several municipalities for state, county, township, school and municipal purposes and equal to that received by other property throughout the state. This is conclusive upon this court.

French v. Barber Asphalt Co., 181 U. S. 341, 344;
Parsons v. Dist. of Columbia, 170 U. S. 45;
Chadwick v. Kelly, 187 U. S. 544.

C.—Denial of the right of hearing upon the rate of taxation.

(1.) By constitution and statute, the duty is imposed on the state board of assessors to ascertain and determine the average rate levied on property other than that subject to assessment by it, upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes. The state supreme court (*Board of Education v. State Board of Assessors*, 133 Mich. 116), has held this duty ministerial in character, to be performed by taking the aggregate assessments of such other property of the state on which ad valorem taxes were assessed as a divisor, and the aggregate ad valorem taxes assessed throughout the state for state, county, township, school and municipal purposes as a dividend, and pursuing a mathematical computation,—the resulting quotient being the average rate to be imposed on the property subject to assessment by a state board of assessors.

(2.) The power and right to determine a tax rate is political and governmental in character, to be exercised by the people themselves or their legally authorized representatives. In either case no notice to the persons affected by the rate is essential. (*Cooley on Taxation* (2d Ed.) 337, 443; *Wharton v. School Directors*, 42 Pa. St. 363, 364; *Spencer v. Merchant*, 125 U. S. 345, 353, 354.)

In this case, the rate has been fixed and determined by the people and the system is, in effect, the imposition of a specific rate upon property, assessed according to its cash value; and a hearing upon the computation to determine the rate is no more necessary than it would be in case a definite rate were to be imposed rather than an average rate.

The function which the board of assessors performs is a mere ministerial one, for the purpose of reducing to a cer-

tainty the rate fixed in the constitution. (*Morton, Bliss & Co. v. Comptroller*, 4 S. C. 474.) In the performance of this ministerial function, there is no necessity for a hearing or opportunity to be heard, as a hearing, granted to the persons affected by the rate, could not affect the result. That result must, in all instances, be the same, where the method pointed out by the statute is carried out.

Hagar v. Reclamation District, 111 U. S. 708, 709;
Hoge v. Muscatine County, 176 U. S. 280;
Amery v. Keokuk, 72 Iowa, 704;
Gillette v. Denver, 21 Fed. 824;
Reclamation District v. Phillips, 108 Cal. 314.

In *Hagar v. Reclamation District* (111 U. S. 709, 710), it was said:

"Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business) and generally, specific taxes on things or persons or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold and he be thus deprived of his property. Yet there can be no question, that the proceeding is due process of law, as there is no inquiry into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the taxpayer. No right of his is, therefore, invaded. Thus, if the tax on animals be a fixed sum per head, or on articles a fixed sum per yard or bushel or gallon, there is nothing the owner can do which can affect the amount to be collected from him. So, if a person wishes a license to do business of a particular

kind or at a particular place, such as keeping a hotel or a restaurant, or selling liquors or cigars or clothes, he has only to pay the amount required by the law and go into the business. There is no need in such cases for notice or hearing. So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in the State, or on domestic corporations for franchises, if the parties desire the privilege, they have only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it."

(3.) The legislature designated the class and the rate of taxation it shall bear; there is no apportionment among the members of the class and no opportunity of hearing upon the rate is required to be given; and full hearing has been accorded upon the assessments.

Spencer v. Merchant, 125 U. S. 353, 354;
Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 174;
Walston v. Nevin, 128 U. S. 582;
Paulsen v. Portland, 149 U. S. 39, 40;
Nottage v. Portland, 35 Ore. 553, 554;
Guthrie on 14th Amendment, 96.

In *Spencer v. Merchant* (125 U. S. 354), it was said: The "objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety, and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion."

(4.) If the state board of assessors, in reaching this rate, pursues a wrong method or assumes an excess of authority, the property owner affected by such erroneous procurement of the rate is entitled to redress his or its grievances in the courts. (§ 14, *act* 173, 1901.) This satisfies all constitutional requirements.

McMillen v. Anderson, 95 U. S. 37;

Glidden v. Harrington, 189 U. S. 259, 260.

D.—Does the constitutional provision and act 173 impose a higher rate on corporations affected by its provisions, than is imposed on other property, and if so what is the effect?

(1.) It is not a fair inference from the terms of the constitutional provision and the act, or their administration, to assume that the effect will be a difference in rate, to the disadvantage of the corporations taxed thereunder, nor is it the fact. The act and constitutional provision are designed for, the express purpose of producing equality of burden and, subjecting the corporations, subject to act 173, to the same rate of taxation as is imposed upon other property, to such an extent as is possible; the average rate imposed on the other property is to be imposed on the property of these corporations.

The constitution provides that all property (that assessed by the state board of assessors and that locally assessed) shall be valued, for taxation purposes, at true cash value. The taxing system of the state attempts to place both classes of property on the basis of cash value, so far as valuation is concerned, and to secure this equality by processes of review. by the supervisory action of a state board, authorized and empowered to raise assessments to their cash value, and by penal statutes designed to secure strict performance of the official duty imposed. The system is capable of subjecting both classes to equality of burden, as fully as can any system of taxation that can be devised.

If inequality exists in any instance, it results from, and is induced by, the administration of the law—not by the law itself; against inequalities of this character, where the taxing system is designed to prevent discrimination and secure equality, the courts can afford no relief, and the fourteenth amendment offers no protection, unless the inequalities resulting from the administration of the statute are the result

of fraud, or its equivalent, or a concerted action on the part of the officers of the law to bring about discrimination.

That the inequality resulting from a system reasonably designed to secure equality of burden is without redress, is indicated by the late case of *Trvaelers' Life Ins. Co. v. Connecticut* (185 U. S. 364, 371). It was there said:

> "This court has frequently held that mere inequality in the results of a state tax law is not sufficient to invalidate it."

And further, quoting from *Tappan v. Merchants' Nat. Bank* (19 Wall (86 U. S.) 490, 504),

> "Absolute equality in taxation can never be attained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence, require different machinery for the purposes of their taxation. The object should be to place the burden so that it will bear as nearly as possible equally upon all. For this purpose different systems, adjusted with reference to the valuation of different kinds of property, are adopted. The courts permit this."

Again, quoting from *State Railroad Tax Cases* (92 U. S. 575, 612), it is said:

> "Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

And, from *Merchants & Mfgrs. Nat. Bank v. Pennsylvania* (167 U. S. 461, 464):

> "This whole argument of a right under the Federal constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232."

Elliott on Railroads, § 775, 776.

Atchison T. & S. F. R. Co. v. Matthews, 174 U. S. 96.

(2.) That the rate, imposed upon the property of complainant, under act 173, is higher than that paid locally on property in the municipalities in which its property is located, is not sustained by the proof. In some instances it is higher, in others it is lower, as is indicated by the following table (*taken from pages 476, 477 of the record*):

Railroad.	Counties in which land owned.	Average rate.
Manistique Ry	Alger, Marquette	.02167+
Duluth, S. S. & Atl.	Alger, Baraga, Chippewa, Gogebic, Houghton, Luce, Mackinac, Marquette, Ontonagon, Schoolcraft	.01479+
Chi. & N. W.	Alger, Delta, Dickinson, Gogebic, Iron, Marquette, Menominee, Ontonagon	.02526+
M., St. P. & Ste. M.	Alger, Chippewa, Delta, Mackinac, Menominee, Schoolcraft	.02855+
Chi. Mil. & St. P.	Baraga, Dickinson, Houghton, Iron, Marquette, Ontonagon, Delta, Menominee	.01395+
G. R. & I.	Allegan, Charlevoix, Emmet, Grand Traverse, Kalamazoo, Kalkaska, Kent, Mecosta, Montcalm, Osceola, Otsego, St. Joseph, Wexford, Missaukee, Cheboygan	.01554+
L. S. & M. S.	Allegan, Branch, Calhoun, Eaton, Hillsdale, Ingham, Jackson, Kalamazoo, Kent, Lenawee, Monroe, St. Joseph, Washtenaw, Wayne, Barry	.01629+
Pontiac, Ox. & No.	Huron, Lapeer, Oakland, Tuscola	.01277+
Ann Arbor	Benzie, Clare, Clinton, Gratiot, Isabella, Livingston, Manistee, Missaukee, Monroe, Osceola, Shiawassee, Washtenaw, Wexford	.01622+
Gogebic & Mont. River	Gogebic	.02555+
Lake Sup. & Ish.	Marquette	.02070+
Marquette & S. E.	Marquette	.02070+
Copper Range	Houghton, Ontonagon	.00858+
Escanaba & Lake Sup	Delta, Dickinson, Marquette	.01746+
Wis. & Mich	Menominee, Dickinson	.02467+
G. T. W.	Calhoun, Cass, Eaton, Genesee, Ingham, Kalamazoo, Lapeer, Shiawassee, St. Clair, St. Joseph	.01470+
D., G., H. & M.	Clinton, Genesee, Ionia, Kent, Oakland, Ottawa, Shiawassee, Wayne	.01732+
Mich. Air Line	Ingham, Jackson, Livingston, Macomb, Oakland	.01254+
T. Sag. & Mus.	Gratiot, Kent, Montcalm, Muskegon	.01580+
Cin. Sag. & Mack.	Bay, Shiawassee, Saginaw	.01452+
D. & M.	Alcona, Alpena, Arenac, Bay, Cheboygan, Iosco, Montmorency, Ogemaw, Otsego, Presque Isle	.02539+
Manistee & N. E.	Benzie, Grand Traverse, Leelanau, Manistee	.01997+
Mineral Range	Baraga, Houghton, Keweenaw, Ontonagon	.00905+
Chi., Det. & Can. G. T. Jct.	St. Clair	.01282+
St. Clair Tunnel Co	St. Clair	.01282+
S. Ste. Marie Bridge Co.	Chippewa	.02569+
Pere Marquette	Allegan, Antrim, Bay, Benzie, Berrien, Charlevoix, Clare, Clinton, Eaton, Emmet, Gladwin, Grand Traverse, Gratiot, Huron, Ingham, Ionia, Isabella, Kalkaska, Kent, Lake, Lapeer, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Osceola, Ottawa, Saginaw, Sanilac, St. Clair, Tuscola, Van Buren, Washtenaw, Wayne	.01726+
Michigan Central	Barry, Bay, Berrien, Branch, Calhoun, Cass, Cheboygan, Clinton, Crawford, Eaton, Genesee, Gladwin, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Macomb, Monroe, Oakland, Ogemaw, Otsego, Roscommon, Saginaw, Shiawassee, St. Joseph, Tuscola, Van Buren, Washtenaw, Wayne, Arenac	.01540+

This table indicates the necessity of separate classification of railroad companies and that their property could not with equality and justice be taxed with the general property of the state as that would bring about a greater discrimination than can possibly exist under the present system. The classification which has been made selects those properties which are alike and fixes the same burden upon them. It may not be the identical burden as is placed upon all other property, but it is eminently more fair than to place this property under the same system as property which is not of the same class and bring about a variation of rate between different railroad companies. In such a system there might be some ground of complaint in that the different railroad companies were taxed at different rates unless there was some reason for the distinction.

The tax at the rates in the municipalities in which the property of a railroad company exists would bring about very apparent differences in rate.

The Chicago & Northwestern would pay taxes at the rate of $25.26.

The Minneapolis, St. Paul & Sault Ste. Marie, $28.55.

The Lake Superior & Ishpeming, $26.55.

The Sault Ste. Marie Bridge Co., $25.89.

While the Duluth, South Shore & Atlantic would pay $14.79.

The Chicago, Milwaukee & St. Paul, $13.95.

The Michigan Air Line, $12.54.

The St. Clair Tunnel Co., $12.82.

Mineral Range, $9.05.

Copper Range, $8.58.

The variation of rate which occurs in the present system will occur from year to year and the rate in a particular municipality may be greater or less than the average rate in a given year. This, however, is no objection to the validity of

the system, under *Travellers' Life Ins. Co. v. Connecticut* (185 U. S. 369), where it was said:

> "* * * the mere fact that in a given year the actual workings of the system may result in a larger burden on the non-resident was properly held not to vitiate the system, for a different result might obtain in a succeeding year, the results varying with the calls made in different localities for local expenses."

The rate imposed under act 173, in 1902, was $16.55329 per one thousand dollars of valuation, while the average of that imposed in the several municipalities in which property was assessed was, in case of the complainant $15.40.

(3.) If act 173 makes a valid classification by selecting the railroad and other property subject thereto, for the purpose of applying to it a different rule of taxation than is applied to other property, there is no requirement that it impose the same rate on the property of both classes. This doctrine has been repeatedly affirmed.

> Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283;
> Clark v. Titusville, 184 U. S. 329;
> Bell's Gap, etc. R. R. Co. v. Pennsylvania, 134 U. S. 232;
> Home Life Ins. Co. v. New York, 134 U. S. 594.

In *Magoun v. Illinois Trust & Sav. Bank* (170 U. S. 283), the legislature of Illinois classified inheritances, with reference to their amount and the degree of relationship to the decedent, and imposed a graduated tax on the separate classes, ranging from one to six dollars for each one hundred dollars in value of the interest taken by the beneficiary. This imposition of different rates on the different classes created, was held valid and to violate no requirement of the fourteenth amendment.

In *Clark v. Titusville* (184 U. S. 329), a license tax imposed on merchants graduated according to the amount of

their sales, was held not to violate the equality clause of the fourteenth amendment,—although the result was to make persons in the different classes pay at different rates

In both the foregoing cases a graduated excise tax was sustained. They are simply referred to as sustaining the doctrine that different rates may be imposed on the different classes. We do not argue that a graduated rate dependent in amount upon the amount of property owned might be imposed upon property.

The extent of the power of the states was stated by Mr. Justice Lamar in *Pacific Express Company v. Seibert* (142 U. S. 339, 351), as follows:

> "This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms."

Brannon on 14th Amendment, pp. 340, 352;
Guthrie on 14th Amendment, pp. 128, 130, 131.

(4.) If, in the administration of the law, inequality results, the defect of administration does not invalidate the act iteslf; and it is only where officers charged with the administration of the law are moved by corrupt motives, that courts will give relief from illegal assessments.

Cummings v. National Bank, 101 U. S. 153, 161;
Central Railroad Co. v. State Board of Assessors, 48 N. J. L., 1, 7;
Dundee Mortgage & Investment Co. v. School Dist., 21 Fed. 151, 155, 156;
Wagoner v. Loomis, 37 Ohio St., 571, 578, 580;
Taylor, etc. v. Louisville & N. R. Co., 88 Fed. 350;
City of Muskegon v. Boyce, 123 Mich. 535.

E.—The neglect to provide for equalization of the assessments of the property, taxed under act 173, does not violate the fourteenth amendment.

(1.) The constitution (§ 13, *Art. XIV, as amended*), provides:

> "In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a state board on all taxable property, *except that taxed under laws passed pursuant to section ten of this article.*"

Corporations taxed by act 173 are taxed under laws passed pursuant to section ten of article fourteen.

(2.) The system enacted is admirably designed to produce equality, result in uniformity, and prevent discrimination, and the neglect to provide for equalization of the property taxed under act 173 with other property does not result in a denial of equal protection of the laws.

The state constitution provides (§ 12, *Art. XIV*), that "all assessments hereafter authorized shall be on property at its cash value." The provision is applicable alike to assessments made under act 173 and all other assessments throughout the state, and it has been emphasized, if possible, by provisions in both general tax law and act 173, to the same effect.

The system designed is that property throughout the state, other than that subject to assessment under act 173, will be assessed at cash value, and subjected to taxation at such rate as is necessary to be imposed for certain state, county and municipal purposes. The rate which has been levied upon these assessments throughout the state is then, by the state board of assessors (acting ministerially) reduced to an average rate, which is imposed on the property of railroads and other

corporations subject to assessment by act 173, which is assessed upon the same basis on which the other properties of the state were assessed, namely, at cash value. If any discrimination results, it is not the effect of the system, but of its administration. (Dundee M. & T. I. Co. v. School Dist., 21 Federal 155; Travellers' Life Ins. Co. v. Connecticut, 185 U. S. 371.)

(3.) Is any right, to which the corporations subject to taxation under act 173 are entitled, denied by refusing this equalization while giving it to other property? The question is fully answered by what has been heretofore said in regard to classification. The Federal courts have amply sustained the proposition that railroad property may be made a separate class for purposes of taxation, and that it is possible for the state to subject the different classes to separate rules of assessment, review and equalization, to the imposition of different rates and to treat them by entirely different systems. This authority is illustrated by the cases, most of which have been previously referred to. These hold that railroad property may be differently distributed than other property, for purposes of taxation,[2] may be accorded but one hearing, while other property owners are given two or more;[3] may be re-assessed without the re-assessment of other property;[4] may be subject to valuation on real estate every year, while other real estate is valued once in five years;[5] may be denied dis-

NOTE. [2] State Railroad Tax Cases, 92 U. S. 575; Columbus, etc., R. R. Co. v. Wright, 151 U. S. 470;

[3] Pitts. C. C. & St. L. R. R. Co. v. Backus, 154 U. S. 421; Kentucky Railroad Tax Cases, 115 U. S. 321;

[4] Florida v. Reynolds, 183 U. S. 480;

[5] Chamberlain v. Walter, 60 Fed. 788;

count, while it is given to property owners generally;[1] may be alone subjected to a tax to pay salaries of railroad commissioners;[2] may be taxed specifically, while other property is taxed on iths value;[3] may be subject to assessment by a state board, while other property is assessed locally;[4] is not denied equal protection where opportunity to correct undervaluation of its property is not given as to the property of individuals.[5]

A question similar to the one here raised was presented, in *Cummings v. National Bank* (101 U. S., 153, 160, 161), and decided adversely to complainant's contention. There the constitution required all property to be taxed "according to its true value in money." The statute provided separate state boards of equalization for real estate, for railroad capital, and for bank shares, there being no state board to equalize personal property. The action of these several boards of equalization was final, and no superior was provided to equalize the several properties among themselves throughout the state. Objection was made that the system necessarily produced inequality of valuation and was therefore void. The court reviews and disposes of the objection in the following language:

> "We thus see that one board of equalization has charge of the valuation of the real estate of the whole State once in every ten years, another has charge of

NOTE. [1] Louisville & N. R. Co. v. Louisville, 29 S. W. (Ky.) 865;

[2] Charlotte, etc., R. Co. v. Gibbes, 142 U. S. 386;

[3] Northern Pac. R. Co. v. Barnes, 2 N. D. 310, 395-397; McHenry v. Alford, 168 U. S. 651; Central Iowa Railroad Co. v. Supervisors, 67 Iowa, 199;

[4] State Railroad Tax Cases, 92 U. S., 575; Pitts C. C. & St. L. R. R. Co. v. Backus, 154 U. S. 421; St. Louis, etc. R. R. Co. v. Worthen, 52 Ark. 529;

[5] New York v. Barker, 179 U. S. 286.

the valuation of railroad property every year, and a third has charge of the valuation of shares of incorporated banks every year, and the amount fixed by these State boards is in every instance the final basis of taxing that species of property for State and county purposes.

We are asked to decide that, as to this final board of equalization of bank shares; whose function is to equalize the valuation of those shares, *as among themselves*, throughout the State, with no power to consider the valuation of real estate which comes before another board only once in ten years, or other personal property and invested capital which never comes before any State board, that its operations must necessarily produce inequality in valuation as it regards other property, and is therefore void, as in conflict with the State constitutional rule of uniformity, and with the third section of the same article of the Constitution, declaring 'that all property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals.'

But there are two reasons why we cannot so hold. First, it might be that in every instance the result would be the valuation of bank shares at a lower ratio in proportion to its real value than that of any other property, and therefore plaintiff would have no ground of complaint. And, secondly, what is more important, if these original valuations and equalizations are based always, as the Constitution requires, on the actual money value of the property assessed, the result, except as it might be affected by honest mistakes of judgment, would necessarily be equality and uniformity, so far as it is attainable. So that while it may be true that this system of submitting the different kinds of property subject to taxation to different boards of as-

sessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that is not the necessary result of these laws, or of any of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the Constitution, it is unfaithfully administered by those who are charged with its execution. Their doings may be unlawful while the statute is valid." (101 U. S. 160, 161.)

Taylor v. Louisville & Nashville R. Co., 88 Fed. 350, 370;

Wagoner v. Loomis, 37 Ohio St. 571.

(4.) In this case, equalization is not essential or appropriate to be extended to the railroad property as it is given to other property, by reason of the different purposes, and methods, of taxation applied to each.

The equalization, accorded by the constitution, is not for the purpose of reconciling individual assessments, but to aid in the apportionment of the state tax in order that it may be equally distributed among the municipalities. By the system in vogue the state taxes are apportioned to the counties through equalization, and the state and county taxes to the township and the value at which these equalizations take place necessarily bear no relation to the cash value of the property. No tax is imposed upon the property of the railroad corporation, and other property simultaneously, and for that reason no apportionment among the classes further than that which takes place in the natural operation of the system is necessary. The only apportionment necessary takes place through the ascertainment of the average rate borne by one class and its imposition upon the other.

(5.) If in any case, inequality exists between the classes, it results from under or over assessment, in one or the other class, and with this condition equalization does not deal. These evils must be corrected by processes of review, and in the processes of review, the railroad property participates with the other property as in both classes the final judgment of whether cash value has been reached, is that of the same board.

(6.) The peculiarity of the Michigan system which dispenses with the propriety for equalization, is that one central board has charge of the assessments of the property of railroad corporations, and, also, of the final valuation of the general property. Whenever necessity for equalization exists it is created by a diversity of judgments in making assessments, but where the assessments are subject to one mind, equalization can not be essential.

(7.) Equalization is given as freely to the railroad property as to other property so far as it affects individual rights and individual assessments. In the township individual assessments are corrected and equalized by a township board of review, which stands in the same relation, so far as the property in the township is concerned, as the men constituting the board of state tax commissioners stand to the railroad property and to other property. If equalization in another form than given is required as between the railroad property and the general property, it is equally required in every township between the individual owners of property.

(8.) The only case where a taxpayer is entitled to equalization as a matter of right is in a case of fraud; when this exists the courts equalize; so, the right to equalization, if existing is not denied. If the assessments are not fraudulent their amount is the value of the property.

F.—Objection that the rate is fixed without a legislative determination of the needs in any year of the community receiving the taxes or of the fund benefited.

(1.) I do not perceive how the fourteenth amendment requires a legislative declaration of the needs of a particular year as a prerequisite to the validity of a tax. The state constitution contains no direct requirement of such declaration, and the fourteenth amendment was not intended to import into the taxing system of any state any rules other than those securing due process and equal protection of the laws.

There must be constitutional or legislative sanction for every tax. Here the constitution fixes the rate by reference to the average rate levied on other property. The effect is identical with the statement, of a rate by a percentage of assessed valuation, or of an aggregate amount to be raised.

That the state constitution does not require an expression of the needs of the fund benefited in any case, and particularly in the present, is evident: The tax rate is fixed by the constitution itself, and if a provision had previously been contained therein, requiring a declaration of the needs of the funds benefited in any year, that provision, so far as this particular tax is concerned, would be superseded, the provision fixing the tax rate, being of later enactment.

(2.) The constitutional provision in question contains the equivalent of a declaration that the amount of tax to be derived under act 173 will, with the other resources of the state, be adequate to the needs of the state government and the educational funds benefited thereby. This is in the declaration that the average rate imposed on property subject to ad valorem assessment for state, county, township, school and municipal purposes shall be imposed on the corporations subject to assessment by the state board of assessors.

By the constitutional amendment and statute, it is decreed that a certain rate of taxation, to be reduced to certainty by the action of the state board of assessors, pursuing a mathematical calculation, based on ascertained data, shall be imposed on the corporations taxed. This is a declaration that the amount of taxes realized from the imposition of that rate will be required for the use of the government in carrying out the purposes for which the tax is imposed.

It is a fundamental principle that all power not confided to the national government, remains in the people, and it is a necessary sequence that a constitutional provision fixing a tax rate is as complete a declaration of the needs of any year as could be made by the legislature, if such a declaration be requisite.

The fixing of tax rates by the constitution is recognized by Judge Cooley who says (*Taxation* 2d. *Ed.* 324), in speaking of the authority for the levy of the tax:

> "The authority may come from the constitution, which, in exceptional cases, will provide for the levy of a specific tax, or for a tax for some defined purpose."

(3.) Neither state or Federal constitution requires a specified sum to be designated to be levied for a particular purpose, and the declaration here of the needs of the government is simply the application, with slight modification, of a system of determining the amount of tax to be raised, in vogue in this state for many years. Railroad and other corporations have always been subject with constitutional sanction, to specific taxation in this state. In imposing taxes of that character on railroads, the statute has provided that a certain rate per cent should be imposed upon the gross earnings for a particular year, and the amount to be realized on the application of such a rate has never been such as could be reduced to an exact certainty, but has always been a matter

of approximation, varying with the earnings of the several years. If the instance before us does not constitute a determination of the needs of the government, then the imposition of specific taxes has never constituted such a declaration.

It has also been the policy and practice of the state (and statutes to that effect are at present on its statute books), to require a certain specified rate to be imposed and collected for the benefit of certain funds; thus, there is the one mill tax for the benefit of the primary school interest fund; the one-quarter mill tax for the benefit of the university; the one-sixth mill tax which was for the benefit of the war loan sinking fund; and the military tax, of a certain number of cents per capita, to be spread upon property. If, in the instance before us, there is no declaration of the needs of the government, and such a declaration is required, each of these statutes must fall with that we are considering.

In *Morton, Bliss & Co. v. Comptroller General* (4 S. C. 430, 475), it was said:

> "Since 1869, the legislature has given the rate to be levied instead of fixing a gross sum to be raised, as was done in the last mentioned year. The consequence is that in the ascertainment of the rate for the various tax levies since 1869, the legislature was compelled to assume, approximately, the aggregate value of taxable property from data afforded by preceding years, inasmuch as the basis of the tax ordered could, under the tax laws, be ascertained only as the result of an assessment that was to take place subsequent to the enactment fixing the rate. If the legislature had deemed it most convenient to indicate the sum to be raised, and left it to the executive officer to ascertain the rate after the assessment was completed and the aggregate value of taxable property known, as was done in 1869, there is no good reason why they should have been

precluded from so doing, unless, as respondent says, the Constitution forbids it. The nicest scrutiny of the Constitution fails to discover any clause or expression looking towards any such result. That instrument is absolutely silent on the subject in question. If such a construction arises at all, it must be from all or some of the sections of the statute already quoted, while there is not in them the least ground for such a construction. The legislature possesses full authority to resort to either mode of arriving at the result, as they may judge most expedient."

(4.) Our constitution has always provided for the imposition of a certain rate per cent on such interests as might be designated by the legislature, in the provision authorizing the state to continue to collect and provide for the collection of specific taxes.

The constitution has also provided for an annual tax to pay the estimated expenses of the state government; but says that in the imposition of such tax the other resources of the government must be taken into consideration. (§ 1, *Art XIV.*) The specific tax and the tax before us are instances of the "other resources of the state."

(5.) *Taxation of railway companies by the "average rate" is not novel or confined to Michigan.*

In New Hampshire the statute for the "Taxation of Railroads and Telegraph and Telephone Lines" provides:

"Every railroad corporation in this state, not exempted from taxation, shall pay to the state an annual tax upon the actual value of its road, rolling stock and equipments on the first day of April of each year, at a rate as

nearly equal as may be to the average rate of taxation at that time upon other property throughout the state."

§ 1, Chapter 64, Public Statutes and Session Laws of New Hampshire, in force January 1st, 1901.

See also:

Revised Laws of Mass. (1902) Vol. 1, Chap. 12, Sec. 93, p. 227; Chap. 14, Secs. 37-40, pp. 266-268 incl.;

Revised Statutes of Missouri (1899) Vol. II, pp. 2175, 2176, Secs. 9363, 9364;

Laws of Wisconsin (1903) Chap. 315, Secs. 7 to 14, inc., pp. 496, 7, 8 and 9.

See Railroad v. The State, 60 N. H. 87.

(*b*) The system in force in Missouri of imposing school taxes on railroads at the average rate of school taxes imposed in the several municipalities of the counties through which the road runs, furnishes an instance of the validity of the identical provision we are considering. The system has been in the statute at least thirty years and in a number of instances, declared not open to constitutional objection, either as measured by the state or Federal constitutions.

State v. Mo. Pac. R. R. Co., 92 Mo. 137;

Chicago & Alton R. R. v. Lamkin, 97 Mo. 496;

Matter of Apportionment of Taxes, 78 Mo. 595;

State v. M. S. Ry. Co., 161 Mo. 199.

(*c*) This is not the first imposition of an average rate in Michigan. Such a rate was imposed in statutes of 1899 (*act* 19) *and* 1881 (*act* 168),

both invalid for other reasons. It is significant that the supreme court of the state, in the only case in which the statute and constitutional provisions involved in this case have been before it, said:

> "We, however, entertain no doubt that under the construction we have placed upon this provision, the legislature was well within the limits of its authority."
>
> Board of Education v. State Board of Assessors, 133 Mich. 116, 121.

(6.) No claim is made that the taxes imposed on the class to which complainant's property belongs, was in excess of the needs of the government, or of the fund to which devoted. Though the requirement be that the tax levied must not exceed the needs of the purposes of government to which to be devoted, and a levy in excess of such needs, would furnish a ground of complaint, still the presumption would be that the tax raised did not exceed the needs of the purpose or fund to which to be devoted, which could only be overcome by pertinent and strong evidence. There has been no attempt at such a showing in this case, and there is, therefore, no injury to complainant in this regard of which it can complain.

(7.) If the objection be that the needs of the community are taken into account in taxation generally, but not as applied to the complainant, the answer is:

> (*a*) That this element is as fully taken into account in fixing complainant's taxes as in fixing other taxes.
>
> (*b*) That there are many instances of, and it has always been the practice in Michigan to subject property to taxation at continuing rates

voted in one year and applicable until repealed. (*Ante p.* 92, 181.)

(*c*) Railroad property forms a different class, and it would be permissible to apply different rules to it in this respect than are applied to other property.

(*d*) If a difference exists, it is one of form and not of substance, and of such a character that it might properly be made in the exercise of the right to amend corporate charters.

G.—Violation of the fourteenth amendment in that act 173 does not state the tax or its object while all other tax laws are required to "distinctly state the tax."

This assignment is in substance that act 173 does not state the tax or its object and that therefore discrimination results. In does not go to the extent of claiming that act 173 was required by the provision of the state constitution to state the tax.

We consider

> (1.) Was it necessary for this statute to state the tax or its object?
>
> (2.) Does it do so?
>
> (3.) Whether if it does not state the tax the fourteenth amendment is violated?

Section 14 of article XIV of the Michigan constitution provides:

> "Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

(1.) *The necessity for act* 173 *to state the tax and its object.*

> (*a*) *The tax.* In this case, section 14 of article XIV does not apply, for the reason that the tax is, in reality, fixed in the constitution itself. (*Sec.* 11, *Art. XIV.*)
>
> It was not within the legislative province to add to or vary the constitutional statement of the tax, and when it selected the subjects of taxation by a state board of assessors, the tax was required to be such as, and to be imposed on the subjects, stated in the constitution.

The provision requiring a tax law to state distinctly the tax and its object does not apply uniformly to all taxes but only to those recurring annually and those imposed generally upon the entire property of the state.

Matter of McPherson, 104 N. Y. 306, 318;
People v. Fire Assn. of Phil., 92 N. Y. 311, 327;
Jones v. Chamberlain, 109 N. Y., 100;
Ford's Petition, 6 Lans. (N. Y.) 97;
Guest v. Brooklin, 8 Hun. (N. Y.) 97.

In *Matter of McPherson* (104 N. Y. 319), it was said:

"The object of the constitutional provision was to convey information to the members of the legislature and to the people, and it should have a practical construction, with a view to accomplish its purpose as far as attainable and to carry out the policy which we may assume dictated it.

The tax imposed by this act is a permanent one. It is always uncertain upon whom it will fall and how much revenue it will produce. It would have been impossible for the legislature, perhaps years in advance, to specify the particular objects to which the tax should be applied, and we are of opinion that this section of the constitution was intended to apply to the annual recurring taxes known at the time of the adoption of the constitution and imposed generally upon the entire property of the state."

(b) *The object.* The requirement that a law imposing a tax shall state the object does not apply

in this case, as the constitution (§ 1 art. XIV), unalterably fixes the object.

Walcott v. People, 17 Mich. 68;

Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487;

Pingree v. Auditor General, 120 Mich. 108, 109,—Opinion Grant, J.

In *Walcott v. People*, it was said:

"Section 14 was not intended to apply to cases in which the object of the tax should be found distinctly and unalterably fixed by the constitution itself."

(2.) *Does act* 173 *state the tax or its object.*

(a) By the requirement that the tax shall be distinctly stated, we must assume it was intended that the tax imposed be stated with sufficient definiteness to permit its being made certain. This is all the constitution requires, whether the statement be of a rate, a gross amount, or a duty imposed on some officer or body, acting within his or its legitimate jurisdiction, to fix the amount.

People v. Mahaney, 13 Mich. 499;

Union Trust Co. v. Wayne Probate Judge, 125 Mich. 494;

Trowbridge v. City of Detroit, 99 Mich. 443;

People v. Supervisors of Orange, 17 N. Y. 238;

Commonwealth v. Brown (Iverson Brown's Case), 91 Va. 762, 777.

(*b*) *The Tax.* The legislature, has, in act 173, practically reiterated the statement of the tax as made in the constitution. In section 12 of that act, the state board of assessors is required to

ascertain the average rate, and in section 13 it is provided, "Said board shall tax the property of the several companies as assessed by it, at the rate as determined by it." The constitution fixes the rate, which is fixing the tax, and the legislature and the board of assessors, acting under its direction, simply provide the means, and perform the ministerial duty, of reducing that rate of tax to certainty.

Iverson Brown's Case (91 Va. 778) disposing of a question similar to that here presented, arising under a constitutional provision identical with ours, is of interest on this proposition. The court said:

> "It is true that the act contains a tax. Is it distinctly stated? It is prescribed to be 'an amount equal to the amount of tax that may be levied by the state on any other species of property.' It is made exactly the same as that which is imposed on other property. Tongmen are required to pay the same tax on the fair value of the oysters taken and sold by them that is paid by others on other property of the same value. The tax is accurately prescribed. It is not open to mistake or doubt. It is, in the sense of the constitution, distinctly stated. The act specifically and definitely fixes the amount of the tax, and in this respect complies with the letter and purpose of the constitutional provision."

In *People v. Mahaney* (13 Mich. 499), a provision which provided an annual tax of varying amounts dependent upon the estimate of certain officers, was held to distinctly state the tax; the court said:

"It was impossible that the amount should be fixed in advance; and there is nothing in the language employed in this section of the constitution which warrants us in holding that every law providing for a tax is invalid, unless it limits in amount the sum to be levied."

In *Trowbridge v. City of Detroit* (99 Mich. 443), the amount of the tax was only determined after a reference to a jury to determine the amount to be raised, and it was held that the statute stated the tax.

There is in the statement of the average rate the statement of a distinct tax. The provision for the average rate made certain the amount to be levied. There is no reference to any other law or to the discretion of any person or officer and still the tax can be made certain in amount; the necessary conclusion is that it is fixed by the only body which had any discretion in regard to it—the people—; a computation is necessary to reach a rate in figures but that is also the case where a tax of a certain sum is levied. There would be no claim in such a case that the tax is fixed by the officers performing the ministerial computation. It certainly is not fixed or stated by local officers, as they have no duty to perform or direct influence in regard to it.

Complainant's counsel refer at length to the case of *People v. Supervisors of King's County* (52 N. Y. 556, 566), as bearing upon this question and holding that § 14 of article XIV was designed for the protection of the public, in which it is opposed to *Westinghausen v. People* (44 Mich. 265).

The New York case is distinguished from this as in that case the statute expressly made the tax rate discretionary with certain administrative officers. Counsel also points out that the Michigan constitutional provision requiring the statement of the tax and its object was adopted from the New York constitution, though it is doubtful if the statement can be said to be strictly true, as the constitutions of many of the states and some existing prior to the adoption of this provision by Michigan contain the identical provision.

Counsel is also responsible for the statement that with the adoption of the New York constitutional provision was taken the construction of the New York courts in the case referred to. It may be noted that this decision was rendered 23 years after the adoption of the Michigan constitution and that the rule is that subsequent constructions are not adopted with the statute of another state.

(c) *The object.* Act 173 specifically states the object of the tax. Section 16, after providing that the taxes shall be applied as required by the constitution, further provides:

> "That if any of the corporations, companies or associations herein named were not paying specific taxes to this state on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the state."

It is significant that all corporations taxed under act 173 belong to classes paying specific taxes under the laws in force on November 6th, 1900.

It has been held that a statement of the fund to be benefited is a sufficient statement of the object, though the fund be general in nature.

Westinghausen v. People, 44 Mich. 267;
People v. Mahaney, 13 Mich. 499;
People v. Supervisors of Orange, 17 N. Y. 235;
People v. National Fire Ins. Co., 27 Barb. (N. Y.) 188;
Cooley on Taxation (3d Ed.) 551.

In *Westinghausen v. People* (44 Mich. 267), the taxes at issue were required to be placed to the credit of the contingent fund of the municipality in which collected. This was objected to as not being a sufficient specification of the object of the tax. The court, in disposing of the question, says of section 14 of article XIV:

> "Its intent is manifest, to prevent the legislature from being deceived in regard to any measure for levying taxes, and from furnshing money that might by some indirection be used for objects not approved by the legislature. * * * It must receive a reasonable construction to carry out its design. The statute in question does not, we think, violate that design. * * * We can see no reason why the increase of the contingent fund of a corporation is not a specific object. * * * There is no uncertainty in a provision which names the classes of beneficiaries, and devotes the taxes to their use in a fund which is perfectly understood by everyone as devoted to non-specified purposes, some of which could not be readily foreseen. If this objection is

good it would be difficult to understand why a city charter allowing money to be paid into a contingent fund, would not come within similar difficulties. A nice objector might say that paying money over to a city or township for general purposes would be uncertain. We must treat these provisions sensibly, and not hypercritically; and when the purpose is named and unmistakable, and it is impossible for the legislature to be misled concerning it, no other practical requirement can be found."

In *People v. Supervisors of Orange* (17 N. Y. 235), a tax was imposed which, when collected, was required "to be paid into the treasury of the state to the credit of the general fund." This was held to be a sufficient designation of the object.

(3.) *The fourteenth amendment is not violated, for the reasons:*

(*a*) That act 173 as fully and completely states the tax and its object as it is required to be stated in any tax law, whether imposing a specific or property tax, and whether upon property of corporations or individuals.

(*b*) That if the corporations enumerated in and taxed under act 173 are proper subjects of classification, it is permissible to apply different rules to them, and the Federal constitution would not be violated by a requirement that a tax law state the tax and its object, when imposed upon other persons or corporations, when no such requirement existed in regard to the corporations enumerated in act 173, and proper subjects of different classification.

(*c*) The complainant's taxes are fixed in the constitution; all other taxes are fixed by the legislatures. Reasons might and do exist why it would be essential to state the tax in the one and not in the other case. This justifies the difference, if it is permissable to tax the property of the railroad by the constitution, while other property is taxed by statute, which will not be denied.

(*d*) In New York one class of statutes is required to state the tax and its object, another class is not required to do so. (*Ante p.* 187.) This has never been thought a violation of the fourteenth amendment. On the contrary, the inheritance tax statute of the state which was passed upon in the case of *Matter of McPherson* (104 N. Y. 306, 318) and there held not required to state the tax or its object has been repeatedly held valid. If a violation of the fourteenth amendment could be found in the Michigan system, in that act 173 does not state the tax or its object while other taxing statutes are required to do so, the system approved in New York is clearly open to attack.

H. Under the system of taxation complained of, the same rate is applied to all railroad property regardless of location. This is objected to as the tax rates in the several municipalities in which the different railroad companies have property are different. We do not believe that this objection can be seriously made, or is entitled to serious consideration. It goes without saying that, as compared with each other, railroad corporations and their property may be made a single class in the legislative discretion, regardless of what may be the result of the comparison of their property with that of others.

We deem it unnecessary to say anything further than that railroad companies may be treated as a single class, or may be for different purposes separated into distinct classes based upon elements of differences such as the amount of their earnings, the locality in which they exist, the length of their lines, etc. (*Ante p.* 114.)

FIFTH.

The constitutional provision and statute do not deprive of property without due process of law.

I.

What due process requires. The requirements of due process are expressed in *Hagar v. Reclamation District* (111 U. S. 708), as follows:

> "It it sufficient to observe here that by 'due process' is meant one, which following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary, for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means therefore, there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

As applied to matters of general taxation, it has been uniformly held that any system which gives to the party taxed any means of questioning the validity or amount of the tax at some stage of the proceeding, either before it is determined and fixed, or to contest subsequent proceedings for its collection, is due process.

Brannon on Fourteenth Amendment, 349, 350, 351;
State Railroad Tax Cases, 92 U. S. 575, 610;
McMillen v. Anderson, 95 U. S. 37;
Winona, etc. Land Co. v. Minnesota, 159 U. S. 537;
Pittsburgh C. C. & St. L. Ry. v. Board of Public Works, 172 U. S. 45;

Weyerhaeuser v. Minnesota, 176 U. S. 556, 557;
French v. Barber Asphalt Co., 181 U. S. 324;
Voigt v. Detroit, 184 U. S. 122;
King v. Portland City, 184 U. S. 69, 70;
Turpin v. Lemon, 187 U. S. 58;
Glidden v. Harrington, 189 U. S. 259, 260.

A state statute for raising public revenue by the assessment and collection of taxes, which gives notice of the proposed assessment to an owner of property to be affected, by requiring him, at a time named, to present a statement of his property, with his estimate of its value, to a designated official charged with the duty of receiving the statement; which fixes time and place for public sessions of other officials, at which this statement and estimate are to be considered, where the official valuation is to be made, and when and where the party interested has the right to be present and to be heard; and which affords opportunity, in a suit at law for the collection of the tax, to judicially contest the validity of the proceeding, does not necessarily deprive of property without "due process of law," within the meaning of the fourteenth amendment.

Kentucky Railroad Tax Cases, 115 U. S. 321.

In *Glidden v. Harrington* (189 U. S. 258), it was said of general taxes upon personal property:

> "Although with respect to this class of taxes we have never had occasion to determine exactly what the fourteenth amendment required, we have held that the proceedings should be construed with the utmost liberality * * * It is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of Law."

In *Leigh v. Green* (193 U. S. 88) quoting with approval language used in *Davidson v. New Orleans* (96 U. S. 97), it was said:

"That whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. * * * The state has a right to adopt its own method of collecting its taxes, which can only be interfered with by Federal authority when necessary for the protection of rights guaranteed by the Federal constitution."

In *Turpin v. Lemon* (187 U. S. 57), it was said:

"It would appear that the fourteenth amendment would be satisfied by showing that the usual course prescribed by the state laws required notice to the taxpayer and was in conformity with natural justice. Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or for the imposition of special taxes for local improvements, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential. *Spencer v. Merchant*, 125 U. S. 345; *Huling v. Kaw Valley Railway*, 130 U. S. 559; *Hagar v. Reclamation District*, 111 U. S. 701; *Paulsen v. Portland*, 149 U. S. 30. But laws for the assessment and col-

lection of general taxes stand upon a somewhat different footing and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary.

It was not the intention of the Fourteenth Amendment to subvert the systems of the states pertaining to general and special taxation; that amendment legitimately operates to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property, as is afforded by the fifth amendment against similar legislation by congress; and the federal courts ought not to interfere when what is complained of is the enforcement of the settled laws of the state, applicable to all persons in like circumstances and conditions, but only when there is some abuse of law, amounting to confiscation of property or deprivation of personal rights."

French v. Barber Asphalt Paving Co., 181 U. S. 324;

Cass Farm Co. v. Detroit, 181 U. S. 396;

Tonawanda v. Lyon, 181 U. S. 389;

Detroit v. Parker, 181 U. S. 399.

The notice and opportunity for hearing is sufficient if given, at some stage of the proceeding; thus, it has been held that, a hearing, prior to assessment, at the time of the assessment, or subsequent to the assessment before a board of review or equalization, satisfies the requirement; and that where no opportunity for hearing is afforded, except in contesting proceedings for the enforcement of the tax in the courts, the constitutional requirement is sufficiently complied with, and this notice is sufficiently given and due process of law, so far as notice is concerned, is satisfied, where the statute, as in this case, prescribes the time and place of the sittings of the board.

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 426;
Winona, etc. Land Co. v. Minnesota, 159 U. S. 526;
State Railroad Tax Cases, 92 U. S. 575;
Hagar v. Reclamation District, 111 U. S. 710;
McMillen v. Anderson, 95 U. S. 37;
Weyerhauser v. Minnesota, 176 U. S. 556, 557;
Lander v. Mercantile Bank, 186 U. S. 458;
Merchants' & Mfgrs. Nat. Bank v. Penn., 167 U. S. 467;
Cooley on Taxation (3d Ed.), 630, 631, and cases.

II.

What is accorded by this act. The statute in question fully observes all of the rights of the corporations taxed thereunder; it gives the necessary opportunity for, and due notice of, hearing; by it, the several corporations taxed are permitted to make reports of the character, description and value of their property and assessment is then made by the board of assessors, based on such reports and such other facts as may come or be brought to its knowledge; after completion of the assessment, provision is made for review and hearing thereon by section 10, which is in part:

> "On the third Monday of December in each year, it shall be the duty of the state board of assessors to meet at the state capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said state board of assessors may, on

such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal."

III.

The specific reasons assigned by complainant why the act in question deprives it of property without due process of law.

A. That under it, the complainant's taxes are not imposed by a representative legislature, but by local officers of municipalities who do not represent the complainant as to its property beyond the jurisdiction of such officers. The answers to this objection are:—

(1.) Complainant's counsel proceeds upon a wrong premise. He assumes that the rate is not legislative or constitutional, but is fixed by local officers of the several municipalities. In fact, the rate is not fixed by the officers to whom he attributes authority over it.

(2.) The rate is in fact fixed in the constitution by the people, and the complainant and its property have had full representation and hearing (*see argument Ante p.* 162). The representation and hearing is as full as is accorded upon the rate in any case of a tax rate fixed, or tax imposed, by legislature or constitution. The action is that of the state itself as distinguished from its representatives and when the state, through the people who constitute it, acts, every person, entity, and interest, and all property have been represented. The corporation could not vote, it is true, but the right of suffrage is not essential to the validity of taxing statutes—otherwise how could the property of women, corporations, non-residents, or infants be taxed?

Cooley on Taxation (3d Ed.) 96;

Thomas v. Gay, 169 U. S. 264, 275;
Wheeler v. Wall, 6 Allen (Mass.) 558;
Smith v. Macon, 20 Ark. 17.

(3.) The local officers of the municipalities of the state having duties to perform with regard to taxation, might be made a board to fix the taxes of corporations taxed in the state as a single district. It is, however, unnecessary to advance this theory or to discuss it, as the rate is clearly fixed by the legislature and constitution.

(4.) If the objection be that this is taxation without representation in violation of a republican form of government, and that thus deprivation of property without due process of law is effected, the answer (in addition to what has been stated in regard to the rate being legislative and constitutional) is:

The constitutional provision is:

> "The United States shall *guarantee to every state in this Union* a republican form of government and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence." (§ 4, *Art. IV, Federal constitution.*)

(*a*) This article was designed to secure the maintenance of government in the several states in such general form as it existed in the original states at the time of the adoption of the constitution, (*Story on Constitution, 5th Ed.;* § 1814; Minor *v. Happersett,* 88 U. S. 162, 175), still, there is little beyond this to indicate what constitutes the republican form of government guaranteed. As said by Judge Cooley:

> "The principles of republican government are not a set of inflexible rules, vital and active in the constitution, though unexpressed, but they are subject to variation and modification from motives of policy and public necessity; and it is only in those particulars in which experience has demonstrated any departure from the settled practice to work injustice or confusion, that we shall discover an incorporation of them in the constitution in such form as to make them definite rules of action under all circumstances." *Cooley Constitutional Limitations* (*7th Ed.*) 238.

In *Minor v. Happersett,* (88 U. S. 162, 175), it is said:

> "The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended. The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of

what was republican in form, within the meaning of that term as employed in the Constitution."

(*b*) It may be regarded as settled, that the guaranty was not included to guard rights or interests of particular citizens or individuals, but is a guaranty to the states, as states. The whole article concerns the character of the government secured to the states by the Federal government and not the duty or obligation of the state, or Federal government to any particular individual, set of individuals, or property interests.

In the history (*Documentary History, Con. of United States, pp.* 19, 64, 108, 123, 370, 371, 322, 456, 651, 652, 732) of the adoption of this article of the constitution, there is no word to indicate that any private right or interest was to be secured thereby, but all the proceedings indicate its purpose to be to secure the maintenance of the state government in such certain form, as regarded necessary to the continuance of the Union. This was deemed to be the purpose of the provision by Judge Cooley (*Con. Lim.* (*7th Ed.*) 45), and he says:

"The purpose of these is to protect a Union founded on republican principles, and composed entirely of republican members, against aristocratic and monarchical innovations." (*Kadderly v. Portland,* 74 Pac. 710, 719.)

This idea is indicated by Mr. Madison's contributions to the Federalist, who is quoted by Story (*Story on Con.* (*5th Ed.*) § 1815), as having said:

"In a confederacy founded on republican principles and composed of republican members, the superintending government ought

clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other and the greater right to insist that the forms of government under which the compact was entered into should be substantially maintained.

> The word 'guarantee' does not mean to form, to establish, to create; it means to warrant, to secure, to protect the state, that is the body politic, in its right to have a republican form of government. It defends the people against the interference of any foreign power, or of any intestine conspiracy against its right as a body politic to establish for itself, republican forms of government" (*Tucker on Con.*, *p.* 638.)

That the article concerns the relations between state and nation, rather than being a guaranty of private rights is indicated by *Texas v. White* (74 U. S., 700, 720, 721), where it is said:

> "It [*the word 'state'*] describes sometimes a people or community of individuals, united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region inhabited by such a community; not infrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory and government. It is not difficult to see that in all these senses the

> primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser and less definite relations, constitute the state. This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established. * * * There are instances in which the principal sense of the words seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion. In this clause a plain distinction is made between a state and the government of a state."

The Federal government is bound to secure to the state a republican form of government, the state is bound to the United States to furnish that government, and it is not for particular individuals or, property interests to object that the form of government furnished by the one and approved by the other, is not republican in nature, because of some particular provision of the state's statutes, which does not affect its system of government as a whole. If the nature of the government is republican and conforms in general to the principles of government of the original states, or is recognized by the Federal government, this article cannot be made a ground of attack on a particular law or set

of laws. In other words, the ground of objection must be found in some other provision of the constitution.

> "The courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental principles of republican government, unless it shall be found that those principles are placed beyond legislative encroachment by the constitution. (*Cooley's Con. Lim.*, (*7th Ed.*) 237, 238.)

(c) Questions of whether a government exists or is republican in form are not properly presented to the judiciary. The nature of the thing attempted to be secured, the means, methods and action and judgment for securing it are political in character, to be determined by Congress and not the courts.

Luther v. Borden, 7 How. 39, 42, 47, 57;
Texas v. White, 74 U. S. 700, 730;
White v. Hart, 13 Wall. 649, 652;
Tucker on the Con., p. 637, 638;
Story on the Con. (Cooley's note), p. 593, 5th Ed.;
Cooley on Con. Lim., (7th Ed.) pp. 237, 238.

In *Tucker on the Constitution* (pp. 637-8), it is said:

> "The law, therefore, necessary and proper to guarantee a republican form of government must be passed by Congress to carry into execution this duty reposed in the United States. The words 'to guarantee to every State in this Union a republican form of government,

> obviously discriminate the State as a Body-politic from its government, whose form must be republican. * * * If Congress must guarantee, must it not determine when the occasion arises for its exercise?"

In *Texas v. White* (74 U. S. 700, 730), it is said:

> "But the power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress. 'Under the fourth article of the Constitution, it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State, before it can determine whether it is republican or not.'"

B. The objection is also that due process is denied in that no hearing is given upon the rate of taxation. No hearing is necessary for the reasons:

(1.) That the rate is fixed in the constitution and by the legislature in the exercise of governmental powers.

Spencer v. Merchant, 125 U. S. 345;
Hagar v. Reclamation District, 111 U. S. 701;
French v. Barber Asphalt Paving Co., 181 U. S. 341-344.
Williams v. Eggleston, 170 U. S. 311;
Parsons v. District of Columbia, 170 U. S. 45-50;
Paulsen v. Portland, 149 U. S. 39-40;
Judson on Taxation, § 377 et seq., p. 467.

In *Spencer v. Merchant* (125 U. S. 345, 352, 354, 355), it was said:

> "The act of 1881 determines absolutely and conclu-

sively the amount of tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. *Litchfield v. Vernon,* 41 N .Y. 123, 141; *People v. Brooklyn,* 4 N. .Y 427; *People v. Flagg,* 46 N. Y. 405; *Horn v. New Lots,* 83 N. Y. 100; *Cooley on Taxation,* 450. *The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review.* * * * These views furnish also an answer to the objection that the only hearing given to the land-owner relates to the apportionment of the fixed amount among the lots assessed, and none is given as to the aggregate to be collected. No hearing would open the discretion of the legislature, or be of any avail to review or change it. A hearing is given by the act as to the apportionment among the land-owners, which furnishes to them an opportunity to raise all pertinent and available questions, and dispute their liability, or its amount and extent. *The precise wrong of which complaint is made appears to be that the land-owners now assessed never had opportunity to be heard as to the original apportionment, and find themselves now practically bound by it as between their lots and those of the owners who paid. But that objection becomes a criticism upon the action of the legislature and the process by which it determined the amount to be raised and the property to be assessed. Unless by special permission, that is a hearing never granted in the process of taxation. The*

legislature determines expenditures and amounts to be raised for their payment, the whole discussion and all questions of prudence and propriety and justice being confided to its jurisdiction. It may err, but the courts cannot review its discretion. The power to tax belongs exclusively to the legislative branch of the government. *United States v. New Orleans*, 98 U. S. 381, 392; *Meriwether v. Garrett*, 102 U. S. 472. In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall, 'The judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."

See Spencer v. Merchant, 100 N. Y. 585.

In *Hagar v. Reclamation District* (111 U. S. 709), it is said:

"Of the different kinds of taxes which the state may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and generally, specific taxes on things, or persons, or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his propery. Yet there can be no question, that the proceeding is due process of law."

It would not be contended that a hearing was required other than through the taxpayer's representation in the legislature, if the rate were a specified rate, or the tax were of a specified sum, and no different rule can be applied to this

case than is applied in those. The rate as fixed by the constitution and put into operation by the legislature, is definite and fixed, subject to the discretion of no officer or person, and needs but a mathematical computation based upon data furnished by the records of taxes paid by other property to render it certain.

(2.) In the determination of the average rate by the board of assessors, its duty is purely ministerial (133 Mich. 116), and as a hearing could not alter the result or affect the determination, it is not required. *(Cases Ante p. 163.)*

The error in complainant's argument, upon the denial to it of due process of law in that the rate is not fixed by representative legislature, and that it is denied the right of hearing thereon, arises from its mistaken conception of the source of the tax imposed. If, as it claims, the rate were fixed, affected by, and dependent upon the action of officers of local municipalities, the arguments which it advances might be entitled to serious consideration. The assumption of fact with which it starts, is, however, entirely unwarranted as the rate is clearly and undeniably fixed in the constitution and rendered effective by the legislature, and is not in any degree imposed, affected, or controlled by other officers.

(3.) The complainant has not averred or shown any injury to it from the application of this method. As a prerequisite to injunction to restrain the collection of taxes, complainant should make it clear that it ought not in equity to be asked to pay the taxes from which it asks relief.

Mercantile National Bank v. Hubbard, 98 Fed. 465, 469;

Musselman v. Logansport, 29 Ind. 533;

Cowell v. Doub, 12 Cal. 273;

Anderson v. City of Mayfield, 93 Ky. 230, 237, 238;

Streight v. Durham, 10 Okl. 361, 373; 61 Pac. 1096, 1100;

Dundy v. Richardson Co. Comrs., 8 Neb. 508, 519;
South Platte Land Co. v. Crete, 11 Neb. 344, 347;
Jones v. Summer, 27 Ind. 511;
Porter v. R. R. I. & St. L. R. Co., 76 Ill. 596;
Conway v. Younkin, 28 Iowa 295;
Warden, et al. v. Supervisors, 14 Wis. 618;
Miltimore v. Supervisors, 15 Wis. 10;
See Cooley on Taxation (3rd Ed.) 1443 and cases cited.

C. It is further objected that the payment required of complainant is not a tax, but an arbitrary forced contribution. The arguments advanced to sustain this claim are the same as those advanced to sustain the claims last above referred to.

Its answer is found in the fact that the rate is fixed in the constitution, carried into effect by the legislature, and that complainant had every opportunity for hearing to which it was entitled.

SIXTH.

I.

Is interstate commerce interfered with.

Complainant does not make clear the particular ground of this objection. If it be that the effect of act 173 is to subject to restraint, the privilege of engaging in or carrying on interstate commerce, or to affect the receipts therefrom, the answer is that the tax imposed is on property located in Michigan. (*Constitution, Art. IV*, §§ 10, 11; *Act* 173, 1901.)

That the states have no authority to interfere with transportation between the states, to impose any restrain upon the right, privilege, occupation or business of engaging therein or to burden the receipts therefrom is established (*Postal Tel. & Cable Co. v. Adams*, 155 U. S. 688, 695), though the rule is now placed beyond question, that the states have full authority to tax, property used in, and, instrumentalities of, interstate commerce, regardless of such use or character or that the larger portion of the value upon which tax is laid originates in such interstate use.

This right has been sustained as to:

Railroads:

Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421;

Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439;

Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 231, 232.

Cars:

Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149;

American Refrigerator Transit Co. v. Hall, 174 U. S. 70; s. c. 24 Col. 300;

Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 19;

Marye v. B. & O. R. R. Co., 127 U. S. 117.

Bridges:

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 623;

Pittsburgh, etc. Ry. Co. v. Board of Public Works, 172 U. S. 32;

Henderson Bridge Co. v. Henderson City, 141 U. S. 689.

Express Companies' Property:

Adams Express Co. v. Ohio, 165 U. S. 194;

Adams Express Co. v. Ohio, 166 U. S. 185;

Adams Express Co. v. Kentucky, 166 U. S. 171, 180;

Fargo v. Hart, 193 U. S. 490.

Telegraph Lines and Property:

Western Union Tel. Co. v. Missouri, 190 U. S. 412;

Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 163;

Western Union Tel. Co. v. Taggart, 163 U. S. 1 ;

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;

Western Union Tel. Co. v. Mass., 125 U. S. 590;

Western Union Tel. Co. v. Mass., 141 U. S. 40.

Steamships:

Transportation Co. v. Wheeling, 99 U. S. 273;

Moran v. New Orleans, 112 U. S. 69.

That the rule extends so far as to permit the states, where taxing, property engaged in, and, instrumentalities of, interstate commerce, to include the intangible value resulting from interstate commerce, is amply sustained.

Atlantic & Pacific Tel. Co. v. Phil., 190 U. S. 160, 163;

Western Union Tel. Co. v. Missouri, 190 U. S. 412, 422;

Western Union Tel. Co. v. Taggart, 163 U. S. 1;

Henderson Bridge Co. v. Kentucky, 166 U. S. 151;
Adams Express Co. v. Ohio, 166 U. S. 186; s. t. 165 U. S. 194;
Adams Express Company v. Kentucky, 166 U. S. 171;
Central Pacific R. R. Co. v. California, 162 U. S. 91;
New York L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 437;
Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 698;
Cleveland C. C. & St. Ry. Co. v. Backus, 154 U. S. 446, 447;
Delaware Railroad Tax, 18 Wall. (85 U. S.) 206, 232.

Of this question in *Adams Express Co. v. Ohio* (166 U. S. 219), it was said:

"It matters not in what this intangible property consists—whether privileges, corporate franchises, contracts, or obligations. It is enough that it is property which though intangible exists, which has value, produces income and passes current in the markets of the world."

In *Cleveland C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 439, 445, 446, 447), it is said:

"The value of property results from the use to which it is put and varies with the profitableness of that use, present, prospective, actual and anticipated. * * * In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another. Take the case before us; it is impossible to disintegrate the value of that portion of the road within Indiana and determine how much of that value springs from its use in doing interstate business, and how much from its use in doing business wholly within the State. An attempt to do so would be entering upon a mere field of

uncertainty and speculation. * * * Either the property must be declared wholly exempt from State taxation, or taxed at its value, irrespective of the causes and uses which have brought about such value. * * * It is enough for the State that it finds within its borders property which is of a certain value. What has caused that value is immaterial. It is protected by State laws and the rule of all property taxation is the rule of value, and by that rule property engaged in interstate commerce is controlled the same as property engaged in commerce within the State."

The attitude of this court has been to sustain, if possible, statutes apparently imposing a burden on interstate transportation, or receipts therefrom. Where it has been possible to say that the tax, while not directly imposed on, was on account of property the corporation owned and which received protection of the laws, within the state, the court has done so and has sustained taxes where the amount was determined by reference to receipts, to capital stock, or to other elements.

Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 696, 697;

New York, L. E. & W. R. R. Co. v. Penn., 158 U. S. 431, 438, 439;

Western Union Tel. Co. v. Mass., 125 U. S. 530, 552;

Pullman Palace Car Co. v. Penn., 141 U. S. 18, 25;

Adams Express Co. v. Ohio, 165 U. S. 220;

Maine v. Grand Trunk Ry. Co., 142 U. S. 217.

See also:

Fairbank v. United States, 181 U. S. 297;

State Tax on Railway Gross Receipts, 15 Wall. (82 U. S.) 284.

In *Postal Telegraph & Cable Co. v. Adams* (155 U. S. 696, 697), it is said:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State, (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon,) and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment. * * * Doubtless no State could add to the taxation of property according to the rule of ordinary property taxation, the burden of a license or other tax, on the privilege of using, constructing or operating an instrumentality of interstate or international commerce, or for the carrying on of such commerce; but the value of property results from the use to which it is put and varies with the profitableness of that use and by whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property, or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution."

In *New York, L. E. & W. R. R. Co. v. Penn.* (158 U. S. 439), it is said:

"The interference with the commercial power must be direct and not the mere incidental effect of the re-

quirement of the usual proportional contribution to public maintenance."

Henderson Bridge Co. v. Kentucky, 166 U. S. 154;

Adams Express Co. v. Ohio, 166 U. S. 220.

See also:

Louisville & N. R. R. Co. v. Kentucky, 183 U. S. 503, 519.

The cases sustain the direct tax on property at full value, including the intangible value resulting from carrying on an interstate commerce; the tax on property determined by reference to the invested capital or capital stock; the privilege tax, so fixed in amount as not to exceed the usual proportional contribution to public maintenance; the excise tax based on gross income, apportioned to the line within and without the taxing state on a mileage basis, and the principles established in these rulings so clearly sustain the Michigan statute, that it seems unnecessary to go into a discussion of possible objections.

II.

The mileage basis of apportionment and its application in this case.

The only assignment of error on this point is in effect that interstate commerce is interfered with.

A. A railroad system may, for purposes of taxation, be treated and valued as a unit, the whole contributing to the value of every part; and where it extends into several states, the value may be apportioned among the several states, on a mileage basis,—this principle having been uniformly sustained and statutes using this basis of apportionment being in force in many states.

> Adams Express Co. v. Kentucky, 166 U. S. 171, 180;
> Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439;
> Adams Express Co. v. Ohio, 165 U. S. 195, 227;
> Western Union Tel. Co. v. Taggart, 163 U. S. 1;
> Postal Tel. & Cable Co. v. Adams, 155 U. S. 688, 697;
> Columbus Southern Ry. Co. v. Wright, 151 U. S. 471;
> Charlotte, etc. Ry. Co. v. Gibbes, 142 U. S. 386;
> Maine v. Grand Trunk Ry. Co., 142 U. S. 217;
> Pullman Palace Car Co. v. Penn., 141 U. S. 18;
> Marye v. Baltimore & Ohio R. R. Co., 127 U. S. 117;
> Western Union Tel. Co. v. Massachusetts, 125 U. S. 530;
> Delaware Railroad Tax Cases, 18 Wall. (85 U. S.) 206;
> American Refrigerator Company v. Hall, 174 U. S. 78;
> Fargo v. Hart, 193 U. S. 490.

To the use of a strict mileage basis there are two exceptions; it cannot be applied:

First—So as to bring, within the taxing state, property not connected with or a part of the railroad business and which has an actual situs in some other state, (*Fargo v. Hart*, 193 U. S. 500), nor,

Second—Can it be applied where, by reason of the existence of valuable terminals in one state, which contribute to and greatly enhance the value of the system, its application would be unfair, as bringing within the taxing state a greater proportion of the value than that state would equitably be entitled to.

> Pittsburgh C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421, 431.
>
> Western Union Tel. Co. v. Taggart, 163 U. S., 1, 23.
>
> Adams Express Co. v. Ohio, 165 U. S. 194-221.

In *Cleveland C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 445), after saying that where a road enters into two states, each is entitled to tax the proportionate share of the value flowing from the operation of the entire mileage as a continuous road and is not bound to enter upon a disintegration of values and attempt to extract from the total value of the entire property, that which would exist if the road within the state were operated separately, it is said:

> "The question is, how can equity be secured between the States, and to that a division of the value of the entire property upon the mileage basis is the legitimate answer."

B. The statute (*Sec.* 8, *act* 173 *of* 1901), under which the state board of assessors acted in making the assessments now questioned, does not (as construed by that board and the attorney general), require that board to apportion the value of property in this state, arising from interstate systems, upon an absolute mileage basis, but permits the exercise, by the board, of such a discretion as to allow it to make apportion-

ment in accordance with the facts, and to recognize and give effect to those considerations which would render the use of an absolute mileage basis unfair. The statute (Sec. 8, act 173 of 1901), provides that:

> "In determining the true cash value of the property of railroad and union station depot companies, which own, lease, or operate lines partly within and partly without this State, the said Board shall be *guided*, in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of main track of the said companies, both within and without this State."

C. The complainant has not shown that it falls within the exceptions rather than the rule above stated, permitting the application of the unit system, or that the application to it of an absolute mileage basis of apportionment would subject to taxation in Michigan a larger proportion of its value than should be taxed here. While complainant has in general terms claimed the result of the assessment to be to subject to taxation in Michigan, property located in other states, the method in which such taxation of property outside the state was made and the amount or character thereof is not shown.

The presumptions, in favor of the validity of the assessment and apportionment made, have in no way been overcome by complainant. It has made:

(*a*) No claim on review or in its pleadings and have furnished no proof, to the effect that an absolute mileage basis of apportionment was used.

(*b*) No claim or showing that the use of an absolute mileage basis would be unfair.

(*c*) No claim or showing that the value of its

terminals, mileage or other property located in other states, or its terminals, mileage or other property in Michigan are out of proportion to the mileage of the systems located in such states.

(*d*) No claim or showing that the effect of the assessment is to include detached property not used in its railroad business, located in other states than Michigan.

Defendant in his answer (*Record*, 49), sets forth:

"That said act does not purport to tax, or permit or require the taxation of any property which is situate outside of the state of Michigan, but permits the said state board of assessors, in determining the value of the property of railroad and union station and depot companies in this state, which own, lease, or operate lines partly within and partly without this state, to be guided by the relation which the number of miles of main track within the state of Michigan bears to the entire mileage of the main track of said companies both within and without this state; that the said act purports to tax only property within the state of Michigan and the mileage without the state is used simply as a basis for determining the value of the Michigan property.

That while the said complainant was authorized to, and did appear before the said state board of assessors in relation to the assessment of its property, it made no showing that the determination of the value of its property in this state upon the mileage basis was unfair or that the portion of its property in other states was of greater value or possessed of greater earning power than its property situate within this state, and that the said state board of assessors in its assessment of the property of said complainant included no prop-

erty of said complainant situate beyond the jurisdiction of the state whether real or personal and whether engaged in its railroad business or otherwise, and all facts which enhanced or augmented the value of any portion of complainant's property situated beyond the limits of the state which would render the use of an absolute mileage basis unfair, were taken into consideration in making such assessment; and no facts existed which were not taken into consideration by said state board of assessors in making said assessment which would subject to taxation in this state a larger portion of complainant's property than is actually situated here."

D. The presumptions all favor the validity of the assessments; it cannot be assumed that the act was intended to have, or that the state board of assessors gave it, extra-territorial operation and included property not within its jurisdiction. This presumption, has not been overcome by any proof made; indeed, it is not possible, in a case of this character to introduce proof which would overcome the presumption of validity of the assessment in the absence of fraud or its equivalent in making the assessment. It might be possible to overcome the presumption that an absolute track mileage basis of apportionment was reasonable or fair, but where as in this case a discretion is given to the board of assessors in making the apportionment, that discretion, when once exercised is absolute in the absence of fraud and cannot be overcome by proof.

Pittsburgh C. C. & St. L., Ry. Co. v. Backus, 154 U. S. 436;

Maish v. Arizona, 164 U. S. 611;

McLeod v. Receveur, 71 Fed. 458.

Adams Express Co. v. Ohio, 165 U. S. 229.

The case at bar is very similar to that of *Pittsburgh C. C. & St. L. Ry. Co. v. Backus* (154 U. S. 421), where the Indiana law providing for the valuation and taxation by a state board of assessors of railroads by a unit system and permitting it, in apportioning the value, attributable to Indiana, of interstate systems, to be *guided* by the relation the mileage within the state bore to the entire mileage of the company, was under consideration. While in one particular that case is slightly different from the one at bar (it having been there shown that terminal facilities rendered the use of an absolute mileage apportionment unfair) the ruling there is decisive of the questions here presented. By authority of the above case, the following propositions may be regarded as settled; that,

(*a*) Extra-territorial operation, of the statute, will not be presumed. (428.)

(*b*) The use, of an absolute mileage basis of apportionment, is not required by the statute. (430.)

(*c*) Only in exceptional cases is the use of an absolute mileage basis unfair, the presumption being that it is fair. (431.)

(*d*) If testimony to the effect that an absolute mileage basis was unfair were presented, it must be presumed, in the absence of anything to the contrary, that the board, in making the assessment, took into consideration the actual facts as exhibited to it. (431.)

(*e*) The fact that there were peculiar matters which gave to the portions of the road outside the state an enormous value as compared with the normal line of the road, does not prove that the board did not take these peculiar matters into consideration, the presumption being that if its attention was called to these facts it did take them into consideration. (435-436.)

(f) Whether in any particular case, such matters are taken into consideration by the assessing board, does not affect the validity of the statute, as it does not require the value of the property in the state to be determined upon an absolute mileage basis. (431-432.)

(g) It is for the companies to present any special circumstances which exist and failing their doing so, the presumption is that all their property is directly devoted to their business, which being so, the proper distribution of its aggregate value would be upon the mileage basis. (*Adams Express Co. v. Ohio,* 165 U. S. 222; 166 U. S. 222.)

E. Any objection along this line which complainant had to make should have been presented to the board of review or it must be considered as waived. (*See cases cited ante p.* 130, 131.) It has made no showing that this was done.

SEVENTH.

Is the ad valorem system for the taxation of railroads, invoked by act 173, a proper exercise of the reserved right to alter, amend, or repeal corporate charters?

(1.) Objections arising under the fourteenth amendment of the Federal constitution are completely answered if the system invoked is a proper exercise of the reserved right to alter, amend, or repeal. Previous to this system of taxation, provisions for taxation of railroad companies by a specific system were a part of the general railroad laws; by act 173 these were superseded, and the new provisions, although contained in a separate and distinct act, became a part of the law, governing the existence of railroad corporations, and a part of the contract between the companies and state.

Act 173 abrogates the article of the general railroad law, relating to taxation and by substitution takes the place of the provisions, therein contained, relating to taxation of companies organized thereunder, and governs them in that respect. In this substitution it was intended to give act 173 the same force and effect, as applied to railroad companies, as was previously given to the article, of the general railroad law relating to taxation. In making substitution it was intended that when the old provisions contained in the general railroad law relating to taxation were abrogated, the new provisions should take their place and should stand in the same relation to, and in effect as fully constitute a part of, the general railroad law as did the previous provisions; act 173, so far as it relates to railroad companies, became an amendment to the general railroad law. Had this been an act regulating rates or imposing a police regulation, would it be questioned that it formed a part of the governing law? I think not; there is no reason why the same rule should not

apply to a statute for taxation, and every reason why it should.

No direct statement of the legislature to effect such amendment, other than contained in the clause (§ 20, Act 173 of 1901), abrogating the taxation provisions of the general railroad law is made, but that is not necessary—the amendment results by implication.

People v. Mahaney, 13 Mich. 489.

Provisions for taxation form a logical and usual part of acts of incorporation. All general acts of Michigan for incorporation and regulation of railroad companies have contained provisions relating to, and prescribing the rate, and system, of taxation. This is indicative of the policy of the state to have the charter or act of incorporation a complete act, representing fully the powers, rights and duties of corporations subject thereto. It is not a violent presumption to assume that the legislature, in the adoption of the new system of taxation intended to continue this policy, and that act 173 of 1901 in superseding the previous law, took its place in, and became part of, the same statute. The proposition seems clear and is supported by numerous cases, holding that acts adopted without reference to the provisions of a charter or act of incorporation become a part thereof.([a])

[1] New York & New Eng. R. R. Co.'s Appeal, 62 Conn. 527, 538;

[2] Columbia, etc. R. R. Co. v. Gibbes, 24 S. C. 60, 73;

NOTE. ([a]) The provisions of a separate general law held to become a part of the previous charter or act of incorporation was in:

[1] New York & New Eng. R. R. Co.'s Appeal, a provision for the separation of grade crossings and the requirement that a large portion of all of the expense be borne by the railroad; in

[2] Columbia, etc. R. R. Co. v. Gibbes, that the corporation should bear the entire expense of a state railroad commission; in

[1] Alabama & V. Ry. Co. v. Odeneal, 73 Miss. 34;
[2] St. Louis, I. M. & S. Ry. Co. v. Paul, 64 Ark. 83, 95 Id., 173 U. S. 404;
[3] Northern Central Ry. Co. v. Maryland, 187 U. S. 258, 268, 269;
State v. Northern Central Ry. Co., 90 Md. 447, 469;
[4] Bangor, Oldtown & Milford R. Co. v. Smith, 47 Me. 34, 48, 49;
[5] Durand v. N. H. & N. Co., 42 Conn. 211, 223;
[6] City of Roxbury v. Boston etc. R. R., 60 Mass. 432;
[7] St. Albans v. Car Co., 57 Vt. 82;
[8] Tomlinson v. Jessup, 82 U. S. 454, 457.
Leep v. Railway Co., 58 Ark. 407;
[9] Stearns v. Minnesota, 179 U. S. 260, (Dissenting opinion);
Penn. R. R. Co. v. Duncan, 111 Pa. St. 352.

NOTE. [1] Alabama & V. Ry. Co. v. Odeneal, the provision related to, and provided for farm crossings; in

[2] St. Louis, I. M. & S. Ry. v. Paul, a penalty for neglect to pay employees in full upon termination of employment; in

[3] Northern Central Ry. Co. v. Maryland, a provision in reference to taxation; in

[4] Bangor, Oldtown & Milford R. Co. v. Smith, a provision providing among other things the procedure of railroad corporations in the location of their tracks and prescribing limitations thereon; in

[5] Durand v. N. H. & N. Co., a provision requiring all railroad companies to maintain fences; in

[6] City of Roxbury v. Boston, etc. R. R., the subsequent act related to railway crossings and the separation of grades; in

[7] St. Albans v. Car Co., the provision of the subsequent law becoming a part of the charter related to the taxation of the shares of stock; in

[8] Tomlinson v. Jessup, the separate act was a reservation of the right to alter, amend, or repeal.

[9] Stearns v. Minnesota provision relating to taxation.

In *New York & New Eng. R. R. Co.'s Appeal* (62 Conn., 527, 538), a general statute making provision for separation of grade crossings of railroads, was held to operate as an amendment to the charters of the railroad corporations affected by it, the court saying:

> "The statute is in its operation an amendment to the charter of each of the railroad corporations affected by it. It imposes on the plaintiff, being a corporation of that kind, an obligation which previous to its passage the charter of the plaintiff did not impose. But as that charter contained the provision that it might be altered at pleasure by the legislature, the statute is binding upon it."

In *Columbia, etc. Railroad Company v. Gibbes* (24 S. C., 60, 72, 73), a general statute of South Carolina providing for railroad commissioners and that the expenses thereof should be borne by the several railroads of the state according to their gross income, was held to become a part of the charter of every railroad company thereafter incorporated, and that such corporations could not object to its validity. Of objection to the act by a corporation subsequently created, it was said:

> "It may be that the general law of 1879 cannot be considered as an amendment of the charter of plaintiffs, for the very conclusive reason that it was in existence at the time the charter was granted; but, as it seems to us, it was more than an amendment—it was a part of the charter itself, or at least one of the conditions upon which the charter was granted and accepted. * * * On November 22, 1880, when the Secretary of State certified that the purchasers of the Greenville Railroad had formed a new corporation under the laws of the State, there was on the statute book of the State a general law, part of what is called the

general railroad law of the State, declaring that every railroad company of the State should contribute its just proportion towards the payment of the expenses of the railroad commission then in existence. Under these circumstances, the charter to the plaintiff corporation was granted by the State, without any reference whatever to the aforesaid liability declared by law; and as the intention of parties must concur to constitute a contract, we are not at liberty to assume that the State intended to grant, or did grant, to the plaintiff any vested rights inconsistent with her own law then on the statute book. The purchasers who became corporators had notice of that law. They accepted the charter in full view of a public act of which all are bound to take notice, and it thereby became a condition of the charter—in a certain sense, a part of the contract—and they cannot afterwards be heard to object to the enforcement of that law. 'In general, one who accepts the terms of a contract must accept the same *in toto;* he cannot accept part and disclaim the rest.' Big Estop., 514.

But it is said that the exaction is in itself unconstitutional, and being such, the legislature could not assume a power prohibited by the constitution even with the consent of the parties concerned. We have endeavored to show that whether an exaction by the State upon a corporation is or is not constitutional must depend upon the character of the rights with which the State has endowed the corporation. If it has been invested with no rights of which the exaction would be an infringement, we do not clearly see how it could be called unconstitutional, any more than the provision in most railroad charters that the company shall at its own expense erect fences, cattleguards, etc.

> If the state were now to create a railroad corporation and insert in the charter *in totiden verbis*, the provision requiring that it should pay its just proportion of the expenses of the railroad commission, and the corporators should accept that charter and put the road into operation, we suppose there can be no doubt that they would be bound by all the provisions of the contract, and would not be heard to say that the one in reference to the payment of the expenses of the railroad commissioners was unconstitutional and void."

In Tomlinson v. Jessup (82 U. S. 454, 457), in speaking of a general statute in force at the time the railroad company's charter was granted, the court said:

> "The company was incorporated in 1851, and at that time a general law of the State was in existence, passed in 1841, which enacted that the charter of every corporation subsequently granted, and any renewal, amendment, or modification thereof, should be subject to amendment, alteration, or repeal by legislative authority, unless the act granting the charter or the renewal, amendment, or modification, in express terms excepted it from the operation of that law. The provisions of that law, therefore, constituted the condition upon which every charter of a corporation subsequently granted was held, and upon which every amendment or modification was made. They were as operative and as much a part of the charter and amendment, as if incorporated into them."

In *Alabama & V. Ry. Co. v. Odeneal* (73 Miss. 34) a provision in a separate act, relative to farm crossings was, as applied to a subsequently organized corporation, held to be "integrated into its charter upon organization."

In *St. Louis, I. M. & S. Ry. Co. v. Paul* (64 Ark. 83, 95; 173 U. S. 404) a separate act imposing penalty for failure to

make immediate payment of wages on discharge of employees, was held to become part of the general railway law by amendment;

And in *Northern Central Ry. Co. v. Maryland* (187 U. S. 258), a separate and distinct statutory provision fixing a rate of taxation, was held to become part of the act of incorporation so as to be within the purview of the reserved right to alter, amend or repeal.

Only on the ground that act 173 of 1901 is an exercise of the reserved right to alter, amend or repeal corporate charters, does it escape impairing the obligation of contract, resulting from corporate charters where such right is not reserved, being the exercise of such right it is necessarily a substitution for and takes the place, of previous provisions, which it supersedes, in the organic law of existing companies and becomes part of charters of companies thereafter created.

The general railroad law and act 173 of 1901 are *pari materia,* to be read and construed as one enactment.

> Chicago R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 696;
> McHenry v. Brett, 9 N. D. 68, 70;
> Dennison v. Allen, 106 Mich. 295;
> Shannon v. People, 5 Mich. 36, 50;
> Ryan, et al. v. Carter, et al., 93 U. S. 78, 84;
> Alexander v. Mayor, 5 Cranch, 7;
> Hendrix v. Rieman, 6 Neb. 517, 522;
> Black on Interpretation of Laws, p. 204, Sec. 86.

(2.) *The reservation of the right to alter, amend, or repeal, and its effect generally.*

The constitution of Michigan (§ 1, *Art. XV*), reserves the right to alter, amend, and repeal corporate charters and privileges as follows:

"Corporations may be formed under general laws,

but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

And the general railroad law, under which complainant does business in Michigan, contains (§6312, *C. L.* 1897), the provision:

> "This act may at any time be altered, amended or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it," etc.

These reservations have been before the supreme court of Michigan in numerous instances, and that court has been uniform in its decisions to the effect that all acts of incorporation, and rights dependent upon their existence, are subject to this reserved power, and in all particulars to legislative control.

> Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 140, 147;
> Detroit St. Rys. v. Guthard, 51 Mich. 180, 182;
> Detroit v. Railway Co., 76 Mich. 421, 426;
> Mason v. Perkins, 73 Mich. 303, 318;
> Bissell v. Heath, 98 Mich. 472, 478;
> Attorney General v. Looker, 111 Mich. 498, 501; affirmed, 179 U. S. 46;
> Smith v. Lake Shore & M. S. Ry. Co., 114 Mich. 460, 462.

In the early case of *Detroit v. Detroit & Howell Plank Road Co.* (43 Mich. 147), Judge Cooley, in passing upon the authority of the legislature to amend and repeal corporate charters where the power to do so was reserved, said:

> "But for the provision in the constitution of the United States which forbids impairing the obligation of contracts, the power to amend and repeal corporate charters would be ample without being expressly

reserved. The reservation of the right leaves the state where any sovereignty would be if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles."

In *Smith v. Lake Shore & Michigan Southern Railway Co.* (114 Mich. 473, 475), in considering the right of the legislature under its reserved constitutional and statutory authority to alter, amend, or repeal corporate charters, to amend the provisions of the general railroad law relating to rates of transportation, the court, after quoting with approval the language used by Judge Cooley, in *Detroit v. Detroit & Howell Plank Road Co.* (43 Mich. 147), says:

> "We think this is a fair statement of the effect of this reservation, and that, if the legislation in question can be construed as depriving the respondent of its property, it is invalid, as conflicting with other constitutional provisions. But we do not think that such is the effect of this legislation. * * * My conclusions are that the regulation is not unconstitutional as applied to roads within the control of the legislature."

The Federal cases upholding the right of a state to repeal, alter, or amend corporate charters, where the right so to do is reserved, are numerous, and sustain the propositions:

> (*a*) The history of the inclusion in corporate charters of a clause reserving the right to alter, amend, or repeal, indicates that such practice grew from a suggestion contained in the opinion of Mr. Justice Story, in the Dartmouth College case (4 Wheat, 518, 708, 712), to the effect that corpora-

tions and corporate charters might by such reservation be kept under control.

(*b*) Where the right to repeal, alter or amend is reserved, the corporate charter and all rights and privileges held thereunder are subject to legislative control, and may be repealed or taken away at the will of that body.

(*c*) "Vested rights, it is conceded, cannot be impaired under such a reserved power, but it is clear that the power may be exercised and to almost any extent, to carry into effect the original purpose of the grant, and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation."

Union Passenger Ry. Co. v. Philadelphia, 101 U. S. 528;
Hoge v. Railway Co., 99 U. S. 348, 351;
Greenwood v. Freight Co., 105 U. S. 13;
Railroad Co. v. Maine, 96 U. S. 499;
Louisville Water Co. v. Clark, 143 U. S. 10, and cases cited;
Sinking Fund Cases, 99 U. S. 700;
Pearsall v. Great Northern Ry., 161 U. S. 663;
Covington v. Kentucky, 173 U. S. 232, and cases cited;
Citizens' Savings Bank v. Owensboro, 173 U. S. 636, and cases cited;
Tomlinson v. Jessup, 15 Wall. 454;
United States v. Union Pacific Ry., 160 U. S. 37, and cases cited.

See also

Miller v. State, 82 U. S. 478, 499;

Holyoke Co. v. Lyman, 82 U. S. 500;
Pennsylvania College Cases, 80 U. S. 190;
Spring Valley Water Works v. Schottler, 110 U. S. 347;
Bienville Water Supply Co. v. Mobile, 186 U. S. 222;
St. Louis, I. M. & S. Ry. Co. v. Paul, 173 U. S. 404;
New Jersey v. Yard, 95 U. S. 104;
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 271.

(3.) In the numerous instances in which this reserved right has been before the courts, it has been established that its purpose and effect is to keep the rights, powers and privileges of corporations under control, to prevent the conferring of rights by one legislature which cannot be abrogated by a subsequent one and to permit the imposition of any regulation not unreasonable or oppressive and which does not deprive the corporation of its vested property interests, interfere with existing contracts, or interstate commerce or in the exercise of the right to amend, essentially impair the object of the corporation.

In its exercise it has been held, that the state may do anything which it might do, if unrestrained by express constitutional limitations[1]; abrogate the act of incorporation, deprive the corporation of existence, and create another corporation to exercise the same franchises and take over its property;[2] enact any regulation which it might have included in the original act of incorporation;[3] withdraw exemptions from

Note. [1] Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 147.

[2] Greenwood v. Freight Co., 105 U. S. 13, 17; Lothrop v. Stedman, 13 Blatch (U. S. 134.

[3] Sinking Fund Cases, 99 U. S. 720, 721; Atchison T. & S. F. R. R. Co. v. Matthews, 174 U. S. 104.

taxation;[4] alter the system of taxation imposed by the charter;[5] regulate the right of contract with employees and impose penalty for failure to pay employees on termination of the employment;[6] provide a system of securing to the minority shareholders representation on the board of directors;[7] regulate rates of fares to be charged by railroads and other public service corporations;[8] impose on railroad companies only, a tax for the maintenance of a railroad commission;[9] change the route of a railroad;[10] and in fact impose any reasonable regulation which does not deprive the corporation of vested property rights, interfere with valid existing contracts, or essentially impair the object of the incorporation;[11] but in the exercise of this reserved power, the legislature cannot invade property rights, establish or make unreasonable regulations or impositions, interfere with existing contracts, or in the exercise of the power to amend, impair the object of the incorporation.[12]

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[4] Tomlinson v. Jessup, 82 U. S. 454; Louisville Water Works Co. v. Clark, 143 U. S. 1; Railroad Co. v. Maine, 96 U. S. 501;

[5] Mayor v. St. Ry. Co., 113 N. Y. 319; Union Passenger Ry. Co. v. Phil. 101 U. S. 528; Citizens' Savings Bank v. Owensboro, 173 U. S. 636.

[6] St. Louis, I. M. & S. Ry. Co. v. Paul, 173 U. S. 404.

[7] Looker v. Maynard, Attorney General, 179 U. S. 46; 111 Mich. 498, 501.

[8] Smith v. L. S. & M. S. Ry. Co., 114 Mich. 460, 472; Spring Valley Water Works Co. v. Schottler, 110 U. S. 347; Peik v. Chicago, etc., Ry. Co., 94 U. S. 164.

[9] Charlotte, etc., R. R. Co. v. Gibbes, 27 S. C. 385.

[10] Township v. N. Y., etc., R. R. Co., 45 N. J. E. 436.

[11] New York & N. E. Ry. Co. v. Bristol, 151 U. S. 567; Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 258.

[12] St. Louis, I. M. & S. Ry. Co. v. Paul, 173 U. S. 408-409; Stearns v. Minnesota, 179 U. S. 240; Louisville Water Co. v. Clark, 143 U. S. 1, 15; Bienville Water Supply Co. v. Mobile, 186 U. S. 222; Shields v. Ohio, 95 U. S. 324.

The extent of the reserved power is so well understood that it is unnecessary to refer at length to the cases to indicate it. If, as has been held, the legislature in its exercise has authority to abrogate entirely the existence of the corporation and withdraw all its franchises, rights, privileges, and immunities which depend for existence and continuance on the charter contract, and may impose any restriction or make any regulations which it could have made on the original creation of the corporation, it must necessarily follow that it can take the milder course and impose a new system of taxation which, while placing the corporation on a basis slightly different from that applied to property generally, continues its existence and permits full enjoyment of its rights and property. The greater carries with it the lesser authority.

(4.) But as indicated by cases referred to, the authority is not without limit; the exceptions to and limitations upon it have been established to be that the regulation shall not, be oppressive, unfair or unreasonable (of which it would seem the legislature must judge), deprive the corporation of vested rights of property or interfere with existing contracts, and in the exercise of the power to amend shall not essentially impair the object of the incorporation. These, and these only, are the limitations established by the cases and unless the authority, attempted to be exercised in this instance, falls within them, it follows that the legislature was well within its power in the enactment of the statute in question.

In *United States v. Union Pacific Railroad Co.* (160 U. S. 36-37), it was said:

> "It may be held that by its reservation of authority to add to, alter, amend, or repeal the acts in question, whenever it chose to do so, congress, subject to the limitation that rights actually vested or transactions fully

consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it or that had accepted the bounty of the government."

In *Greenwood v. Freight Co.*, (105 U. S. 18), it was said:

"One obvious effect of the repeal of a statute is that it no longer exists. Its life is at an end. Whatever force the law may give the transactions into which the corporation entered and which were authorized by the charter while in force, it can originate no new transactions dependent on the power conferred by the charter. * * * In short, whatever power is dependent solely upon the grant of the charter, and which could not be exercised by unincorporated private persons under the general laws of the state, is abrogated by the repeal of the law which granted these special rights. * * * The rights of the shareholders of such a corporation to their interest in its property are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights."

The reservation of this right is not the mere retaining of a right of control, but forms a condition of the contract between state and corporation. That corporate charters create contracts is amply sustained. In cases of the reservation of the right to alter, amend, or repeal, the relation is none the less that of contract; but in, and part of, that contract is the reservation by which the state has secured the right to make and the company has consented to, subsequent alterations by the legislature.

Hoge v. Railroad Co., 99 U. S. 353;
Louisville Waterworks Co. v. Clark, 143 U. S., 15;
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 270.

The reservation being part of the contract it gives the legislature authority, subject to constitutional limitations protecting property rights and contract obligations, to enact any regulation or restriction which will not impair the purpose of the contract, i. e. the object of the incorporation and it is not for the corporation to object on the ground that equal protection of the law is denied. It has contracted that the state might alter the existing contract, and having done so, it is not open to it to claim that, because regulations, exactions or restrictions, are imposed upon or required of it and its property, not required of property owners generally, it is denied equal protection.

This view is sustained by *St. Louis I. M. & S. Ry. Co. v. Paul* (173 U. S. 408-9), where a police regulation, imposed by the state, referring to and restricting rights of railroad companies in contracts made with employees, was questioned as denying to the railroad companies equal protection of the laws. The provision was held not an improper exercise of the reserved right, the court saying:

> "The contention is that as to railroad corporations organized prior to its passage, the act was void because in violation of the fourteenth amendment. Corporations are the creations of the state, endowed with such faculties as the state bestows and subject to such conditions as the state imposes, and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligation; and as this amendment rested on reasons deduced from the peculiar character of the business of the corporations affected and the public nature of their functions, and applied to all alike, the equal protection of the law was not denied. * * * the supreme court held the regulation as promoting the public in-

terest in the protection of employees to the limited extent stated, to be properly within the power to amend reserved under the state constitution. * * * We do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the fourteenth amendment."

Leep v. Railway Co., 58 Ark. 407;

Atchison, T. & S. F. R. Co. v. Matthews, 174 U. S. 104;

Woodson v. State, 69 Ark. 521, 528;

Skinner v. Garnet Gold Mining Co., 96 Fed. 744.

In *Atchison, T. & S. F. R. R. Co. v. Matthews* (174 U. S. 104), it was said:

"It is also clear that the legislature (which has power in advance to determine what rights, privileges, and duties it will give to and impose upon a corporation which it is creating) has under the generally reserved right to alter, amend, or repeal the charter, power to impose new duties and new liabilities upon such artificial entities of its creation."

We do not argue that in the exercise of this power and the imposition of a different system of taxation on the property of complainant, than applied to property generally, the state could tax to such extent as to destroy the property; as in such a contingency the case might possibly be within one of the limitations on the authority of the legislature.

It seems that the limitations on the exercise of this power are very similar to those on the right of the legislature, acting in fixing maximum rates of charges for public service corporations. In those cases the limitation is that the rate shall be reasonable, i. e., shall not be so low as to deprive the corporation of some return on the value, and thus practically deprive it, of its property.

In cases of this, as in cases of that, character:

(*a*) The presumption is that the system invoked is reasonable and does not interfere with property rights or contract obligations;

(*b*) Only where the regulations are so oppressive as to amount to spoliation, can the courts interfere;

(*c*) The burden is on the person attacking the statute to prove its unreasonableness;

(d) Every presumption is to be resolved in favor of the authority exercised by the legislature;

(*e*) There is a question as to whether the judgment of the legislature on the question of unreasonableness is not final.

There has been no showing, or attempted showing that the tax in question is unreasonable, or that its effect would be to impair vested rights, or the obligation of existing contracts, and not having overcome the applicable presumptions they necessarily apply and control.

The system in question is not unreasonable; its purpose, evident, and actual, is to subject corporations taxed under act 173 to the same rate of taxation imposed according to the same principles and to practically the same rules, as imposed on other property throughout the state; the only difference of moment being that the taxing machinery and officers making the assessment and imposing the tax are different. The purpose of the act is not to bring about inequality or oppression, or to burden the corporations taxed under act 173 with more than their just contribution to the public, but it is to place them upon a parity with other property throughout the state. Under no circumstances can this be claimed to be within the limitations on the power to alter, amend or repeal.

(5.) The validity of the act as applied to railroad corporations is not dependent on its validity as applied to other corporations affected by it.

Pittsburgh, etc. R. R. Co. v. Montgomery, 152 Ind. 1, 13;

Tullis v. Lake Erie & Western R. Co., 175 U. S. 348, 351;

Leep v. Railway Co., 58 Ark. 407, 408;

See also 173 U. S. 407.

As applied to railroad corporations, act 173 comprises a complete system capable of complete and separate operation as against the property of those corporations alone.

EIGHTH.

The system of taxation under act 173 as violating the state constitution.

Two particulars are assigned wherein the system under act 173 violates the state constitution:

A. That the assessment of complainant's property under act 173 without deduction of debts from credits, that deduction being permitted to other property owners, violates sections 10 and 11 of article XIV of the Michigan constitution requiring uniformity.

B. That the assessment of complainant's property without the deduction of debts from credits, such deduction being accorded to other property, violates section 12 of article XIV of the Michigan constitution requiring all assessments of property to be at cash value, and section 10 of article XIV requiring the property of corporations to be assessed at cash value.

A. *Considerations applying specially to the uniformity provision of the state constitution.*

(1.) The objection raised under this provision of the constitution is answered by a reference to the purposes for which the constitutional amendments of 1900 affecting this and other provisions of the state constitution, were adopted. Previous to amendment, the state constitution contemplated and permitted but one uniform rule of taxation. All property taxed for general taxes throughout the state was required to conform to that rule and any system of taxation which varied it as applied to the property of corporations, was not permitted. (*Pingree vs. Auditor General,* 120 Mich. 95.) The purpose of amendment was to permit one uniform rule ap-

plicable to the general properties of the state and another distinct and separate uniform rule applicable to the property assessed by a state board of assessors. The amendments provided different agencies of assessment, and intended that different incidents might be applied, in the different classes.

In section 11, article XIV of the constitution, it is required:

> "That the Legislature shall provide a uniform rule of taxation * * * and taxes shall be levied upon such property as shall be prescribed by law."

To this rule there are two exceptions,—(*a*) Property paying specific taxes; (*b*) property assessed by a state board of assessors, the latter being subject to assessment by an uniform rule of its own.

(2.) If as complainant contends, but one uniform rule were permitted, no change in the constitution would have been necessary, the change being made only to permit assessment of the property subject to act 173 by a separate and distinct rule. The property for the assessment of which the legislature was permitted and intended to provide, by a state board of assessors, was of a peculiar character with regard to which different rules of assessment, review, equalization, etc. might properly be made and were intended in the amendment to be made, and any conclusion which finds that the deduction of credits must be uniform in each class must also apply the uniform rule to these other elements and incidents in direct conflict with the purposes with which the change in the constitution was made.

(3.) The provision of section 11 of article XIV of the constitution is as follows:

> "The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and

taxes shall be levied on such property as shall be prescribed by law: *Provided,* That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

The structure of this section indicates that the uniform rule to be applied to the property of corporations subject to assessment by a state board of assessors is an exception to and different from the uniform rule applied in the assessment of other property. Ordinarily a proviso is an exception to the language which precedes it.

Minis v. United States, 15 Peters, 445;
Carroll v. State, 58 Ala. 401;
Sloat v. McComb, 42 N. J. L., 484;

(4.) The requirement of a uniform rule of taxation for all property assessed upon its value, has always existed in the Michigan constitution and is a known and settled rule, and had it been intended that the property to be assessed by a state board of assessors should be assessed by the same uniform rule, instead of making the requirement that this property should be assessed by *"a uniform rule,"* the requirement would have been that it be assessed according to *the* uniform rule. This emphasizes the intent to permit a separate rule for each class.

(5.) Previous to the constitutional amendments of 1900, the one uniform rule which existed permitted deductions to one class of property or property owners which were not given to another class of property or its owners, e. g., ex-

emptions of various kinds were permitted—exemption of credits to the amount of debts was permitted and sustained, while such exemptions were not permitted to personal property generally.

B. *Considerations attaching specially to the requirement of assessment at cash value.*

(1.) The basis of complainant's contention is that the permission of the deduction of debts from credits is a rule of valuation which enters into and effects an increasing or diminishing of the assessed value of the property which is actually assessed. In truth, the deduction is clearly not a rule of valuation. Such is the necessary effect of the previous practice in Michigan. Under that practice the deduction of debts has been uniformly accorded to certain classes of property and denied to other classes, and this practice has always been thought and held consistent with the rule that property must be assessed at cash value. If the deduction of debts from credits amounts to a rule of valuation, the practices and systems in vogue in Michigan under the constitution previous to amendment, have always been illegal.

(2.) If it be conceded, as complainant claims, that the deduction of debts from credits in the valuation of property amounts to a rule of valuation rather than an exemption, this does not affect the constitutionality of the system invoked by act 173, but rather the legality of the system wherein that deduction is given. The constitutional requirement in the assessment of the general property of the state is that it shall be assessed at its cash value. No other rule of valuation than assessment at cash value is permitted, and anything which eliminates from the consideration of the assessor any element of value which reduces the assessment below cash value, is in contravention of the constitutional requirement. It neces-

sarily follows, therefore, that, if the deduction of debts from credits amount to a rule of valuation, instead of the existing conditions affecting the constitutionality of act 173, the effect is that the general laws of the state wherein the deduction of debts from credits is given, are invalid as not furnishing a valuation in accordance with constitutional requirements. The fact that the deduction of debts from credits has been continuously practiced in Michigan since the adoption of its present constitution, and has been sustained in this and in many other states, leads conclusively to the result that permitting the deduction to one and not to another class, does not apply different rules of valuation or violate the requirement of assessment at cash value.

First Nat. Bk. v. St. Joseph, 46 Mich. 526;
Fayette County Treas. v. People's Bank, 47 Ohio S. 503;
Hubbard v. Brush, 61 Ohio S. 252.

(3.) The result, therefore, is that the deduction of credits to the amount of a person's indebtedness, is an exemption rather than a rule of valuation. The constitution does not prohibit exemptions; it provides that "taxes shall be levied on such property as shall be prescribed by law," and this has been held to permit the selection for, or omission from, assessment of such property as the legislature sees fit.

People v. Auditor General, 7 Mich. 90;
Walcott v. People, 17 Mich. 92;
East Saginaw Salt Mfg. Co. v. East Saginaw, 19 Mich. 292-3;
Board of Supervisors v. Auditor General, 65 Mich. 411;
National Loan & Investment Co. v. Detroit, 136 Mich. 451.

In *National Loan & Investment Co. v. Detroit,* supra, we have a recent adjudication which is conclusive of the ques-

tion here presented. There deductions by way of exemption were permitted in the assessment of the property of building and loan associations which were not permitted to other property. This was claimed to violate the rule of uniformity and the requirement of assessment at cash value, but the court held that by the Michigan constitution, exemptions were permitted and that the deductions were not invalid.

(4.) The result of the system is that credits to the amount of indebtedness are not assessed or taxed. The property assessed is assessed at cash value and in this complies with constitutional requirements, while property not assessed is deducted entirely and does not affect the value applied to the property assessed. Only property assessed is required to be at cash value.

C. *Considerations applicable to both the uniformity and cash value provisions of the state constitution.*

(1.) The contemporaneous history of the adoption of act 173 conclusively fixes the status and construction in this regard of the constitutional amendments. They were designed to permit the passage of just such an act as was passed with exactly the requirements with regard to the taxation or deduction of credits as it contains, and therefore the claim that the statute contravenes these amendments in not permitting deduction of debts from credits (if such deductions are not allowed) is without foundation. The history of the adoption of these amendments will be found in the proclamations and messages, of the Governor, to the legislature. (*Rec.* 357, *et seq.*)

The legislature of 1899 after considerable agitation throughout the state, passed what was known as the "Atkinson Bill." (*Act* 19, 1899; *set out in appendix of this brief.*)

This act was in all essential features similar to act 173. It was indirectly declared unconstitutional in *Pingree v. Auditor General* (120 Mich. 95), which led to the adoption of the constitutional amendments here in question permitting the taxation of corporations by a state board of assessors. The purpose of those amendments being to permit the passage of just such an act as the Atkinson bill if this act makes the same requirement in regard to the deduction of debts from credits as was made by the Atkinson bill, it is not subject to question as violating in this respect the requirements of the constitution as amended.

(2.) The constitution and statute are to be considered in the light of the history of their adoption. They are to be so construed that they may stand together. Every presumption is in favor of the validity of the statute, and both the statute and constitutional provisions must be restricted or enlarged to permit the statute to stand.

Assume, for the sake of argument, that the constitutional provisions in question are susceptible to two constructions—one being that contended for by complainant, the other that taken by the legislature; the action of the legislature in adopting one of those constructions and enacting a statute carrying it into effect, as thus construed, must be deemed conclusive. The rule is:

> "That the acts of a state legislature are to be presumed constitutional until the contrary is shown; and it is only when they manifestly infringe some provisions of the constitution that they can be declared void for that reason. In case of doubt, every presumption, not clearly inconsistent with the language or subject matter, is to be made in favor of the constitutionality of the act. The power of declaring laws unconstitutional should be exercised with extreme caution and

never where serious doubt exists as to the conflict." (*People v. Blodgett*, 13 Mich. 151, 161, 162.)

Where a statute has been adopted in carrying into effect a constitutional provision, the constitutional provision and statute must both be so construed and limited or enlarged as to permit the act to stand. This question was passed on in *People v. Blodgett* (13 Mich. 151, 152)), where Judge Christiancy says:

> "But it has been strenuously insisted here that these principles can only properly apply when the doubt exists as to the construction of the act, and not where it arises upon the meaning of a constitutional provision; that it is in all cases the duty of the court first to fix and settle the meaning definitely, of the constitution, whatever may be their doubts upon it, and then to examine the act and apply it to the constitution.
>
> Now, it strikes me, as a self-evident proposition, that the question whether a legislative act conflicts with the constitution, must, of necessity, equally involve the examination of both. And that, while it can make but little practical difference which is first examined and construed, the more logical order, when it is claimed that an act is unconstitutional, would be first to determine what the act is. Nor can I perceive any good ground for holding that the doubt which is to restrain us from pronouncing the act unconstitutional, must be confined to the meaning of the act; nor why courts can be bound to settle, fix and declare the meaning of the one, in spite of their doubts, more than of the other. The doubt which is to save the act, is the doubt of the conflict; and this may arise alike from the construction of the one or the other, or both.
>
> In fact, it will be found that in much the greater number of cases where the rules above cited have been

> laid down, the doubts arise upon the construction of the constitution, and not upon that of the act which was claimed to conflict with it." (*Cooley on Con. Lim. 7th. Ed.* 225.)

The statute was passed for the express purpose of conforming to and rendering effective, the system intended by the constitutional amendments. The amendments and statute must be construed together as constituting a complete system and what is not expressly stated in the act but necessary to its validity, should be regarded as being imparted to it by the requirements and limitations of the amendments. Upon this point in *First National Bank v. St. Joseph* (46 Mich. 529), it was said:

> "The power to tax at all comes from the act of Congress, and it must be obeyed in thorough good faith. Our statute was passed for the express purpose of conforming to the law as existing in 1869, and as substantially re-enacted by the Revised Statutes of 1872. In our judgment the State law and the act of Congress must be read together, and the State officers must act in harmony with the latter. We think there is nothing to prevent this. While we do not ourselves discover any apparent inconsistency in the rule indicated by our statute, yet even if such inconsistency might appear from a strict interpretation of the language, we think that there can be no difficulty in avoiding it in practice if found—as we think it will not be—to result from a construction of the state law by itself."

(3.) The legislature, in enacting act 173, has placed a construction on the constitution; it being its duty to enact statutes to carry into effect this provision it became its duty to determine the limits of its authority thereunder, and its construction, while not entitled to the same weight as a contemporaneous or practical construction acquiesced in for

many years, is entitled to weight and, in case of a doubt, would be controlling; in fact the Michigan supreme court has so held. In *Board of Education v. State Board of Assessors* (133 Mich. 120), the question of the construction of this constitutional provision was before the court which gave effect to the legislative construction, saying:

> "But it is urged in behalf of the power exercised by the board in this case that, if the act is subject to this construction, it is in conflict with the constitutional amendment itself. In determining this question, under well settled rules, we are not to ignore the contemporaneous construction placed upon the amendment by the legislature itself."

See also McPherson v. Secretary of State, 92 Mich. 377; 146 U. S. 1;
Fairbank v. U. S., 181 U. S. 307, 308;
Cooley Con. Lim. (7th Ed.) p. 104.

(4.) The state constitutions are limitations upon and not grants of power to, state legislatures and the legislatures possess all power of legislative character not inhibited by the state constitution or granted to the Federal government. (*Judson on Taxation*, § 431, p. 533.) One of the limitations previous to the amendments of 1900 was that taxation of property should be by an uniform rule. By the amendments it was intended to relax this limitation and broaden the legislative power, permitting it to tax property by another rule, through a state board of assessors.

Two systems of taxation, the specific and by an uniform rule, were previously provided and there were intended to be three after the amendments. The power was granted in general terms and, "where the power is granted in general terms, the power is to be construed as coextensive with the terms, unless some clear restriction upon it is deducible [expressly

or by implication] from the context." (*Cooley Con. Lim.* (7th Ed.), 98.)

Story on Constitution, § § 424-426.

Restrictions must exist in the constitution in order to limit legislative power and as, when they do exist they will be subject to strict construction (*Brooks v. Hydorn,* 76 Mich. 273, 277), they will not be construed to exist unless clearly so intended.

(5.) Assuming that act 173 does violate the state constitution in not providing for the deduction of debts from credits, the statute is not for that reason void, but the requirement would be incorporated into the statute through the operation of the constitution.

In a case in which a state statute, as construed by the state court, prohibited the deduction of debts from personal property to one class while it permitted it to another class, this court held that the statute was not thereby rendered void but voidable and that in an applicable case where the deduction was claimed, the provision which prohibited the deduction would be invalid and the rest of the statute would be constitutional.

Supervisors v. Stanley, 105 U. S. 305;
Supervisors v. Stanley, 121 U. S. 535.

(6.) The statute must be regarded as valid though it should have made provision for the deduction of debts from credits unless it appears:

(*a*) That complainant possessed credits which should have been deducted; and

(*b*) That the deduction was claimed at the proper time, upon the hearing before the board of review.

There is some proof that the complainant did possess

credits of a character peculiar to it, but there is no claim or proof that the board of assessors was requested to make any deduction or that its attention was called to the inclusion of credits.

(7.) It expressly appears that the board of assessors did not include credits in making its assessments. (*Rec.* 431, 438.) Not having included credits, complainant has no ground of complaint, though the statute might be said to be unconstitutional in not providing for the deduction. The action of the board of directors in not including credits may be taken as a contemporaneous construction of the statute and constitution as intending to give to the property of railroad corporations the same deductions as given to other property, and if necessary to render the act constitutional this construction should be followed by this court.

(For detailed argument under another head of proposition considered under 5, 6, *and* 7, *see ante pp.* 125, 127, 128, 130-132, 139.)

We submit that the Michigan system for the taxation of railroad companies and the practices under it, are valid and that the judgment of the circuit court should be affirmed.

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